

THE HONORABLE JOHN H. CHUN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

AMAZON.COM, INC., a corporation,

Defendant.

Case No. 2:23-cv-01495-JHC

**DECLARATION OF KEVIN M.
HODGES IN SUPPORT OF LCR 37
SUBMISSION REGARDING
COORDINATION**

I, Kevin M. Hodges, declare as follows:

1. I am a partner at Williams & Connolly LLP, counsel to Defendant Amazon.com, Inc. (“Amazon”) in this matter and in *California v. Amazon*, No. CGC-22-601826 (Cal. Superior Court, San Francisco County) (the “California Action”). I am over eighteen years of age and am competent to testify herein. I make the following statements based on my personal knowledge.

2. Attached as Exhibit A is Amazon’s Proposed Deposition Coordination Protocol and Order.

3. Attached as Exhibit B is Plaintiffs’ Proposed Deposition Coordination Protocol and Order.

4. Attached as Exhibit C is a redline comparing Amazon’s proposal (Exhibit A) and Plaintiffs’ proposal (Exhibit B).

7. Attached as Exhibit F is a true and correct copy of the Stipulation Coordination Discovery and Order entered on May 23, 2024 in *Mbadiwe et al. v. Amazon.com, Inc.*, No. 1:22-cv-9542-VSB (S.D.N.Y.).

Executed on November 4, 2024 in Washington, D.C.

DECLARATION OF KEVIN M. HODGES ISO
LCR 37 SUBMISSION REGARDING
COORDINATION - 2
(Case No. 2:23-cv-01495-JHC)

EXHIBIT A

THE HONORABLE JOHN H. CHUN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION, et al.,

Plaintiffs,

v.

AMAZON.COM, INC., a corporation,

Defendant.

Case No. 2:23-cv-01495-JHC

**[AMAZON’S PROPOSED]
DEPOSITION COORDINATION
PROTOCOL AND ORDER**

Plaintiffs Federal Trade Commission (“FTC”) and the states and territories of New York, Connecticut, Pennsylvania, Delaware, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, Oklahoma, Oregon, Puerto Rico, Rhode Island, Vermont, and Wisconsin, acting by and through their respective Attorneys General (“Plaintiff States,” and together with the FTC, “Plaintiffs”) and Defendant Amazon.com, Inc. (“Amazon”) have agreed and stipulated to certain issues regarding the coordination of deposition discovery between the above-referenced action (“Action”) and certain other matters, and hereby jointly submit this Stipulated Coordination Protocol and Proposed Order (“Coordination Order”) for approval and entry by the Court.

1 **I. DEFINITIONS**

2 1. The following definitions shall apply for the purposes of this Order:

3 a. Amazon Witness: Any person who is (i) a current employee or officer of
 4 Amazon, or (ii) a former employee or officer of Amazon who is represented by Counsel
 5 for Amazon. Upon receipt of a deposition notice from Plaintiffs for a former employee or
 6 officer of Amazon, Counsel for Amazon shall promptly, and within no more than fourteen
 7 (14) calendar days, notify Plaintiffs in writing if the former employee or officer is
 8 represented by Counsel for Amazon. If Counsel for Amazon does not provide notice that
 9 it represents a former employee or officer within fourteen (14) calendar days, the
 10 deposition shall be governed by the provisions of Section V covering Non-Party witnesses,
 11 unless otherwise agreed to by the Parties.

12 b. Coordinated Actions: *The People of the State of California v. Amazon.com,*
 13 *Inc.*, No. CGC-22-601826 (Cal. Super. Ct.); *Frame-Wilson et al. v. Amazon.com, Inc.*, No.
 14 2:20-cv-00424-JHC (W.D. Wash.); *De Coster et al. v. Amazon.com, Inc.*, No. 2:21-cv-
 15 00693-JHC (W.D. Wash.); *Brown et al. v. Amazon.com, Inc.*, No. 2:22-cv-00965-JHC
 16 (W.D. Wash.); *District of Columbia v. Amazon.com, Inc.*, No. 2021-CA-001775-B (D.C.
 17 Super Ct.) *Mbadiwe et al. v. Amazon.com, Inc.*, No. 1:22-cv-9542-VSB (S.D.N.Y.); and
 18 any other civil action in or approaching active discovery involving substantially similar
 19 claims which is identified and agreed upon in writing by the Parties.

20 c. Coordinated Deposition: A deposition to be conducted pursuant to this
 21 Coordination Order that will be noticed and taken by Plaintiffs and Coordinated Plaintiffs'
 22 Attorneys for at least one of the Coordinated Actions.

23 d. Coordinated Plaintiffs' Attorneys: Counsel of record for plaintiffs in the
 24 Coordinated Actions.

25 e. Counsel for Amazon: Counsel of record for Amazon.com, Inc. in this
 26 Action and the Coordinated Actions.

1 f. Non-Party: Any natural person, partnership, corporation, association, or
2 other legal entity not named as a Party in this Action.

3 g. Party or Parties: Any entity named as a plaintiff or defendant in this Action.

4 **II. GENERAL PROVISIONS**

5 2. This Coordination Order applies to the Parties in the Action, and provides protocols
6 applicable to conducting deposition discovery in this Action. Nothing in this Coordination Order
7 shall preclude or otherwise restrict Amazon from engaging in further or different coordination
8 efforts in the Coordinated Actions or in any other action, but no such efforts by Amazon shall
9 modify this Coordination Order, be binding on Plaintiffs, affect Plaintiffs' ability to take discovery
10 in this Action, or otherwise have any effect on the present Action.

11 3. This Coordination Order shall be effective only upon agreement of the Parties, or
12 by order of the Court.

13 4. Any Party may seek to later modify this Coordination Order for good cause. Prior
14 to doing so, the Parties shall meet and confer in good faith regarding any proposed modifications.
15 This Coordination Order may be amended only by subsequent written agreement among the
16 Parties, or by order of the Court.

17 5. Amazon represents that it is engaged in efforts to negotiate and have substantially
18 similar orders entered in each of the Coordinated Actions. To the extent that any dispute arises
19 related to terms on coordination contained in orders in the Coordinated Actions that differ from or
20 conflict with this Coordination Order, the Parties shall meet and confer to determine if proposed
21 modifications of this Coordination Order may be necessary to facilitate efficient coordination with
22 the Coordinated Actions.

23 6. Unless otherwise agreed to and ordered by this Coordination Order, discovery in
24 this Action shall be governed by the applicable provisions of the Federal Rules of Civil Procedure,
25 the Federal Rules of Evidence, the Court's Case Scheduling Order (ECF 159), Case Management
26 Order (ECF 161), and Order Re Deposition Limits (ECF 166) ("Deposition Order"), any other

1 Court order in this Action, and any other applicable rules or orders that would apply to govern
2 discovery in the absence of this Coordination Order.

3 7. All Parties reserve all rights to formally object (by motion or otherwise) to any
4 deposition or deposition examination on any grounds and seek appropriate relief from the Court
5 as warranted, including with respect to the taking of any deposition or to the timing or scope of
6 any deposition in this Action.

7 8. Only depositions noticed by a Party in this Action shall be treated as having been
8 noticed and taken in this Action, absent an agreement between the Parties to the contrary. Any
9 testimony by an Amazon Witness or a Non-Party witness in a Coordinated Deposition shall be
10 considered deposition testimony given in this Action, whether the examination was conducted by
11 Plaintiffs, by Coordinated Plaintiffs' Attorneys, or by Counsel for Amazon. The Parties reserve
12 all rights to object to the admissibility or use of such testimony pursuant to the applicable rules.

13 9. For any Coordinated Deposition, the Parties agree that the Parties, the Coordinated
14 Plaintiffs' Attorneys, and Counsel for Amazon in the Coordinated Actions may attend and
15 participate in such Coordinated Depositions to the fullest extent permitted under the applicable
16 rules, including this Coordination Order and any Order of the Court in this Action. With respect
17 to any materials or testimony designated Confidential or Highly Confidential – Attorneys' Eyes
18 Only, the Parties' obligations will be governed by the Protective Order in this Action. The
19 obligations of Amazon's Counsel in the Coordinated Actions and the Coordinated Plaintiffs'
20 Attorneys will be governed by the respective Protective Orders in the Coordinated Actions.

21 10. To facilitate coordinated depositions of witnesses between this Action and the
22 Coordinated Actions, Plaintiffs may disclose materials and information derived from such
23 materials designated by Amazon as Confidential or Highly Confidential – Attorneys' Eyes Only
24 under the February 13, 2024 Protective Order ("Protective Order") (ECF 160) to Coordinated
25 Plaintiffs' Attorneys, provided that (i) such materials are reasonably necessary to facilitate such
26 coordinated depositions, including discussions about potential coordinated depositions of Amazon

Witnesses, potential coordinated depositions of Amazon pursuant to Rule 30(b)(6) and/or Cal. Code Civ. Proc. § 2025.230, or potential coordinated depositions of Non-Party witnesses; and (ii) such Coordinated Plaintiffs' Attorneys have agreed in writing to treat those materials and information as Protected Material under the respective Protective Orders in the Coordinated Actions. See Stipulation and Protective Order, *The People of the State of California v. Amazon.com, Inc.*, No. CGC-22-601826 (Cal. Super. Ct. Jan. 27, 2023); Protective Order (ECF 90), *Frame-Wilson et al. v. Amazon.com, Inc.*, No. 2:20-cv-00424-JHC (W.D. Wash. Feb. 27, 2023); Stipulated Protective Order, *De Coster et al. v. Amazon.com, Inc.*, No. 2:21-cv-00693-JHC (W.D. Wash. Mar. 15, 2023); Stipulated Protective Order (ECF 51), *Brown et al. v. Amazon.com, Inc.*, No. 2:22-cv-00965-JHC (W.D. Wash. Oct. 16, 2023); Protective Order Granted, *District of Columbia v. Amazon.com, Inc.*, No. 2021-CA-001775-B (D.C. Super. Ct. Oct. 25, 2024). Coordinated Plaintiffs' Attorneys may disclose materials and information derived from such materials designated by Amazon as Confidential or Highly Confidential – Attorneys' Eyes Only under the Protective Orders in the Coordinated Actions to Plaintiffs. Plaintiffs will treat those materials and information as Protected Material under the Protective Order in this Action.

11. Nothing in this Coordination Order permits any Party to take more than one deposition of any witness without agreement of the Parties and witness or leave of Court.

III. DEPOSITIONS OF AMAZON WITNESSES FIRST NOTICED IN THIS ACTION

12. To the extent Plaintiffs seek the deposition of an Amazon Witness in the Action, Plaintiffs shall issue a deposition notice to Counsel for Amazon, for a date not sooner than forty-five (45) calendar days from the date the notice is served, and provide the deposition notice to the Coordinated Plaintiffs' Attorneys.

13. Within seven (7) calendar days after receiving a deposition notice (or within fourteen (14) calendar days for a former employee or officer of Amazon), Counsel for Amazon shall use best efforts to confirm Plaintiffs' proposed date or, to the extent the witness or counsel is unavailable, provide one or more alternative dates for the deposition. If alternative dates are

1 provided, Counsel for Amazon shall use best efforts to provide at least one alternative date that is
2 within fourteen (14) calendar days of Plaintiffs' initial proposed date, and will not propose any
3 date that would require more than three (3) Amazon Witnesses to be deposed on the same date.
4 The Parties shall thereafter meet and confer on a reasonable and appropriate date, time, and
5 location for the noticed deposition.

6 14. Consistent with Federal Rule of Civil Procedure 30(d)(1) and the Court's
7 Deposition Order, the Parties agree that Plaintiffs' examination of an Amazon Witness in a
8 Coordinated Deposition shall be limited to no more than seven (7) hours on the record, with no
9 more than seven (7) hours on the record per day, unless otherwise agreed to by all Parties and the
10 Amazon Witness.

11 15. For any Coordinated Deposition of an Amazon Witness, the Parties agree that the
12 examination by Plaintiffs and Coordinated Plaintiffs' Attorneys shall be limited to no more than a
13 combined total of ten (10) hours on the record, with no more than seven (7) hours on the record
14 per day unless otherwise agreed to all Parties and the Amazon Witness.

15 16. Notwithstanding the limit set forth in Paragraph 15, Plaintiffs and the Coordinated
16 Plaintiffs' Attorneys may jointly designate up to eight (8) Amazon Witnesses, where the Amazon
17 Witness has not previously testified in a pre-Complaint investigational hearing in this Action or
18 any of the Coordinated Actions, for whom the examination by Plaintiffs and the Coordinated
19 Plaintiffs' Attorneys shall be limited to a combined total of fourteen (14) hours on the record, with
20 no more than seven (7) hours on the record per day unless otherwise agreed to by the Amazon
21 Witness. Plaintiffs and the Coordinated Plaintiffs' Attorneys shall make such designations by
22 written notice no later than thirty (30) calendar days prior to the date of such deposition. If Amazon
23 objects to any such designation, it will provide written notice of that objection to Plaintiffs and the
24 Coordinated Plaintiffs' Attorneys within five (5) business days, and Amazon, Plaintiffs, and the
25 Coordinated Plaintiffs' Attorneys will meet and confer regarding that objection. If a dispute
26 remains, Amazon may seek relief from the Court in this action for Coordinated Depositions first

1 noticed in this action; however, absent agreement of the Parties or Order of the Court, the fourteen
2 (14) hour limit shall apply to such deposition.

3 17. In the event Amazon seeks to coordinate testimony from one or more Amazon
4 Witnesses offered in response to a deposition notice to Amazon pursuant to Federal Rule of Civil
5 Procedure 30(b)(6) in this Action, Amazon shall identify the designated topics for which it
6 proposes offering coordinated testimony at the time Amazon serves its responses and objections
7 to such deposition notice. Amazon shall provide Plaintiffs with the relevant Rule 30(b)(6) or Cal.
8 Code Civ. Proc. § 2025.230 notice(s) and Amazon's responses and objections thereto, whether or
9 not Amazon is proposing coordination. Plaintiffs, in their sole discretion, may also propose
10 coordination for some or all Rule 30(b)(6) topics. Following a proposal for coordination by either
11 side, the Parties agree to meet and confer in good faith concerning the coordination of such
12 deposition, including the scope of testimony and appropriate time limits for said deposition. If no
13 party proposes coordination, or if the Parties are not able to reach an agreement regarding
14 coordination, Plaintiffs may, in their sole discretion, elect to proceed with the deposition on the
15 topics as noticed or as otherwise negotiated by the Parties. If the Parties are not able to reach an
16 agreement regarding coordination after meeting and conferring in good faith, Amazon shall not
17 refuse to designate a witness (or witnesses) or schedule a deposition(s) based on any disputes
18 regarding coordination unless Amazon files a motion for a Protective Order. Nothing in this
19 Paragraph shall affect Amazon's right to object to any deposition notice issued pursuant to Rule
20 30(b)(6) on any grounds.

21 **IV. DEPOSITIONS OF AMAZON WITNESSES FIRST NOTICED IN**
22 **COORDINATED ACTIONS**

23 18. In the event Amazon receives a deposition notice or subpoena for an Amazon
24 Witness in any Coordinated Action, Counsel for Amazon shall promptly notify Plaintiffs and shall
25 provide Plaintiffs with a copy of the deposition notice within seven (7) calendar days.
26

1 19. Upon receipt of a deposition notice from Amazon, and if Amazon's production of
2 documents in response to Plaintiffs' discovery requests issued on or before July 1, 2024 has been
3 substantially complete for at least thirty (30) calendar days, Plaintiffs shall have seven (7) calendar
4 days to notify Counsel for Amazon in writing whether Plaintiffs intend to notice such Amazon
5 Witness for deposition in the present Action such that the deposition will be a Coordinated
6 Deposition, and whether Plaintiffs are reasonably able to proceed with such deposition on the date
7 noticed in the Coordinated Action. If Amazon's production of documents in response to Plaintiffs'
8 discovery requests issued on or before July 1, 2024 has not been substantially complete for at least
9 thirty (30) calendar days at the time Amazon provides notice, Plaintiff may indicate its intent to
10 participate in the deposition of the Amazon Witness, but shall not be required to give such notice
11 until forty (40) days after Amazon substantially completes its production of documents in response
12 to Plaintiffs' discovery requests issued on or before July 1, 2024.

13 20. To the extent Plaintiffs are not reasonably able to proceed with the deposition on
14 the date noticed in the Coordinated Action, or to the extent Plaintiffs require reasonable additional
15 time to prepare, Plaintiffs will use best efforts to coordinate with Amazon and Coordinated
16 Plaintiffs' Attorneys to identify mutually agreeable dates for the Coordinated Deposition.

17 21. If Plaintiffs elect to participate in a Coordinated Deposition first noticed in a
18 Coordinated Action, the provisions in Paragraphs 14 through 16 above shall apply.

19 22. If Amazon does not provide notice to Plaintiffs regarding a deposition notice issued
20 in Coordinated Action as required in Paragraph 18, any later notice by Amazon shall have no effect
21 on Plaintiffs' rights with respect to the deposition of that Amazon Witness in this Action.
22 However, Plaintiffs, in their sole discretion, may elect to participate in a Coordinated Deposition
23 of an Amazon Witness first noticed in a Coordinated Action by issuing a deposition notice for the
24 Amazon Witness. In such instance, the provisions in Paragraphs 14 to 16 above shall apply.

25 23. If Amazon provides notice to Plaintiffs regarding a deposition notice issued for an
26 Amazon Witness in a Coordinated Action as required in Paragraph 18, and Plaintiffs do not elect

1 to participate in a Coordinated Deposition for that Amazon Witness as required in Paragraph 19,
2 Plaintiffs may not seek a deposition of that same Amazon Witness in this Action without Amazon's
3 consent or leave of the Court. Nothing in this Paragraph, or otherwise in the Coordination Order,
4 bars Plaintiffs from seeking agreement from Amazon or leave of Court to take additional testimony
5 from any Amazon Witness based on documents produced by Amazon after the date Amazon
6 represents it has substantially completed its document production.

7 24. In the event Amazon receives a deposition notice to Amazon in its corporate
8 capacity in any Coordinated Action, Counsel for Amazon shall promptly notify Plaintiffs and shall
9 provide Plaintiffs with a copy of the deposition notice within seven (7) calendar days. Amazon
10 shall provide Plaintiffs with a copy of its responses and objections to any such deposition notice
11 contemporaneously with the service of Amazon's responses and objections. In the event either
12 Party seeks to coordinate testimony as to one or more topics in a deposition notice to Amazon in
13 its corporate capacity issued in any Coordinated Action, the Party seeking coordinated testimony
14 shall identify the designated topics for which it proposes coordinated testimony either (i) at the
15 time Amazon serves its responses and objections to such deposition notice (for Amazon); or
16 (ii) within fourteen (14) calendar days of receiving Amazon's responses and objections to such
17 deposition notice (for Plaintiffs). Thereafter, the Parties agree to meet and confer in good faith
18 concerning the coordination of such deposition, including the scope of testimony for any
19 coordinated proceeding and any appropriate time limits for said deposition. If the Parties are not
20 able to reach an agreement regarding coordination after meeting and conferring in good faith,
21 Amazon shall not refuse to designate a witness (or witnesses) or schedule a deposition(s) based on
22 any disputes regarding coordination unless Amazon files a motion for a Protective Order. Nothing
23 in this Paragraph shall affect Amazon's right to object to any deposition notice issued pursuant to
24 Rule 30(b)(6) on any grounds.

1 **V. NON-PARTY WITNESS DEPOSITION COORDINATION**

2 25. The Parties agree that a Party seeking the deposition of a Non-Party witness will
3 issue and send to the other Parties a deposition notice with a proposed date for the deposition,
4 which absent mutual agreement or leave of Court for good cause, shall not be set for a date any
5 earlier than forty-five (45) calendar days from the date the Party serves the deposition notice. A
6 Party may serve a deposition notice without first obtaining or issuing a subpoena to compel
7 attendance of the Non-Party witness at the deposition.

8 26. The Party receiving the deposition notice shall, within fourteen (14) calendar days,
9 advise the Party seeking the deposition as to whether it intends to cross-notice the deposition and
10 if so, shall either (i) confirm the proposed date, or (ii) propose reasonable alternative dates.

11 27. If the Party receiving the deposition notice intends to seek documents in connection
12 with the deposition of the Non-Party witness, the Party receiving the deposition notice shall also,
13 without fourteen (14) calendar days, serve any subpoena for production of such documents on the
14 Non-Party witness (or any other Non-Party affiliated with or previously affiliated with the Non-
15 Party witness, as applicable). The Party serving such document subpoena on a Non-Party shall
16 use its best efforts to reach an agreement with the Non-Party regarding the scope and timing of
17 document production, or to otherwise enforce the subpoena, so as to not unreasonably delay the
18 taking of the Non-Party deposition noticed by the other Party.

19 28. If the Non-Party witness or their counsel is not reasonably available on the date
20 noticed, the noticing Party shall promptly notify all Parties, and the Parties shall meet and confer
21 within five (5) calendar days thereof regarding a date, time, and location for the noticed deposition
22 that is acceptable to all Parties and the Non-Party witness.

23 29. For depositions that are noticed by Plaintiffs and cross-noticed by Amazon, or vice
24 versa, the Parties agree to work in good faith to equally allocate the time available to question each
25 Non-Party witness between Amazon, on the one hand, and Plaintiffs and the Coordinated
26 Plaintiffs' Attorneys, on the other hand.

EXHIBIT B

THE HONORABLE JOHN H. CHUN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION, et al.,

Plaintiffs,

v.

AMAZON.COM, INC., a corporation,

Defendant.

Case No. 2:23-cv-01495-JHC

**[PLAINTIFFS' PROPOSED]
DEPOSITION COORDINATION
PROTOCOL AND ORDER**

Plaintiffs Federal Trade Commission (“FTC”) and the states and territories of New York, Connecticut, Pennsylvania, Delaware, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, Oklahoma, Oregon, Puerto Rico, Rhode Island, Vermont, and Wisconsin, acting by and through their respective Attorneys General (“Plaintiff States,” and together with the FTC, “Plaintiffs”) and Defendant Amazon.com, Inc. (“Amazon”) have agreed and stipulated to certain issues regarding the coordination of deposition discovery between the above-referenced action (“Action”) and certain other matters, and hereby jointly submit this Stipulated Coordination Protocol and Proposed Order (“Coordination Order”) for approval and entry by the Court.

1 **I. DEFINITIONS**

2 1. The following definitions shall apply for the purposes of this Order:

3 a. Amazon Witness: Any person who is (i) a current employee or officer of
 4 Amazon, or (ii) a former employee or officer of Amazon who is represented by Counsel
 5 for Amazon. Upon receipt of a deposition notice from Plaintiffs for a former employee or
 6 officer of Amazon, Counsel for Amazon shall promptly, and within no more than fourteen
 7 (14) calendar days, notify Plaintiffs in writing if the former employee or officer is
 8 represented by Counsel for Amazon. If Counsel for Amazon does not provide notice that
 9 it represents a former employee or officer within fourteen (14) calendar days, the
 10 deposition shall be governed by the provisions of Section V covering Non-Party witnesses,
 11 unless otherwise agreed to by the Parties.

12 b. Coordinated Actions: *The People of the State of California v. Amazon.com,*
 13 *Inc.*, No. CGC-22-601826 (Cal. Super. Ct.); *Frame-Wilson et al. v. Amazon.com, Inc.*, No.
 14 2:20-cv-00424-JHC (W.D. Wash.); *De Coster et al. v. Amazon.com, Inc.*, No. 2:21-cv-
 15 00693-JHC (W.D. Wash.); *Brown et al. v. Amazon.com, Inc.*, No. 2:22-cv-00965-JHC
 16 (W.D. Wash.); *District of Columbia v. Amazon.com, Inc.*, No. 2021-CA-001775-B (D.C.
 17 Super. Ct.); and any other civil action in or approaching active discovery involving
 18 substantially similar claims which is identified and agreed upon in writing by the Parties.

19 c. Coordinated Deposition: A deposition to be conducted pursuant to this
 20 Coordination Order that will be noticed and taken by Plaintiffs and Coordinated Plaintiffs'
 21 Attorneys for at least one of the Coordinated Actions.

22 d. Coordinated Plaintiffs' Attorneys: Counsel of record for plaintiffs in the
 23 Coordinated Actions.

24 e. Counsel for Amazon: Counsel of record for Amazon.com, Inc. in this
 25 Action and the Coordinated Actions.

1 f. Mbadiwe Action: *Mbadiwe et al. v. Amazon.com, Inc.*, No. 1:22-cv-9542-
2 VSB (S.D.N.Y.).

3 g. Mbadiwe Plaintiffs' Attorneys: Counsel of record for plaintiffs in the
4 *Mbadiwe* Action.

5 h. Non-Party: Any natural person, partnership, corporation, association, or
6 other legal entity not named as a Party in this Action.

7 i. Party or Parties: Any entity named as a plaintiff or defendant in this Action.

8 **II. GENERAL PROVISIONS**

9 2. This Coordination Order applies to the Parties in the Action, and provides protocols
10 applicable to conducting deposition discovery in this Action. Nothing in this Coordination Order
11 shall preclude or otherwise restrict Amazon from engaging in further or different coordination
12 efforts in the Coordinated Actions or in any other action, but no such efforts by Amazon shall
13 modify this Coordination Order, be binding on Plaintiffs, affect Plaintiffs' ability to take discovery
14 in this Action, or otherwise have any effect on the present Action.

15 3. This Coordination Order shall be effective only upon agreement of the Parties, or
16 by order of the Court.

17 4. Any Party may seek to later modify this Coordination Order for good cause. Prior
18 to doing so, the Parties shall meet and confer in good faith regarding any proposed modifications.
19 This Coordination Order may be amended only by subsequent written agreement among the
20 Parties, or by order of the Court.

21 5. Amazon represents that it is engaged in efforts to negotiate and have substantially
22 similar orders entered in each of the Coordinated Actions. To the extent that any dispute arises
23 related to terms on coordination contained in orders in the Coordinated Actions that differ from or
24 conflict with this Coordination Order, the Parties shall meet and confer to determine if proposed
25 modifications of this Coordination Order may be necessary to facilitate efficient coordination with
26 the Coordinated Actions.

1 6. Unless otherwise agreed to and ordered by this Coordination Order, discovery in
2 this Action shall be governed by the applicable provisions of the Federal Rules of Civil Procedure,
3 the Federal Rules of Evidence, the Court's Case Scheduling Order (ECF 159), Case Management
4 Order (ECF 161), and Order Re Deposition Limits (ECF 166) ("Deposition Order"), any other
5 Court order in this Action, and any other applicable rules or orders that would apply to govern
6 discovery in the absence of this Coordination Order.

7 7. All Parties reserve all rights to formally object (by motion or otherwise) to any
8 deposition or deposition examination on any grounds and seek appropriate relief from the Court
9 as warranted, including with respect to the taking of any deposition or to the timing or scope of
10 any deposition in this Action.

11 8. Only depositions noticed by a Party in this Action shall be treated as having been
12 noticed and taken in this Action, absent an agreement between the Parties to the contrary. Any
13 testimony by an Amazon Witness or a Non-Party witness in a Coordinated Deposition shall be
14 considered deposition testimony given in this Action, whether the examination was conducted by
15 Plaintiffs, by Coordinated Plaintiffs' Attorneys, or by Counsel for Amazon. The Parties reserve
16 all rights to object to the admissibility or use of such testimony pursuant to the applicable rules.

17 9. For any Coordinated Deposition, the Parties agree that the Parties, the Coordinated
18 Plaintiffs' Attorneys, and Counsel for Amazon in the Coordinated Actions may attend and
19 participate in such Coordinated Depositions to the fullest extent permitted under the applicable
20 rules, including this Coordination Order and any Order of the Court in this Action.¹ With respect
21 to any materials or testimony designated Confidential or Highly Confidential – Attorneys' Eyes
22 Only, the Parties' obligations will be governed by the Protective Order in this Action. The
23 obligations of Amazon's Counsel in the Coordinated Actions and the Coordinated Plaintiffs'

24
25 ¹ Plaintiffs further agree that the *Mbadiwe* Plaintiffs' Attorneys and Counsel for Amazon in the *Mbadiwe* Action
26 may attend, but will not participate in, Coordinated Depositions where the witness has been noticed for a deposition
in the *Mbadiwe* Action (for Amazon Witnesses) or has been subpoenaed for a deposition in the *Mbadiwe* Action (for
Non-Party witnesses). Plaintiffs acknowledge that the *Mbadiwe* Plaintiffs, Amazon, and Non-Parties, as applicable,
may agree on separate deposition time for the *Mbadiwe* Action after any such Coordinated Deposition.

1 Attorneys will be governed by the respective Protective Orders in the Coordinated Actions. The
2 obligations of Amazon's Counsel and the *Mbadiwe* Plaintiffs' Attorneys will be governed by the
3 Protective Order in the *Mbadiwe* Action.

4 10. To facilitate coordinated depositions of witnesses between this Action and the
5 Coordinated Actions, Plaintiffs may disclose materials and information derived from such
6 materials designated by Amazon as Confidential or Highly Confidential – Attorneys' Eyes Only
7 under the February 13, 2024 Protective Order ("Protective Order") (ECF 160) to Coordinated
8 Plaintiffs' Attorneys, provided that (i) such materials are reasonably necessary to facilitate such
9 coordinated depositions, including discussions about potential coordinated depositions of Amazon
10 Witnesses, potential coordinated depositions of Amazon pursuant to Rule 30(b)(6) and/or Cal.
11 Code Civ. Proc. § 2025.230, or potential coordinated depositions of Non-Party witnesses; and (ii)
12 such Coordinated Plaintiffs' Attorneys have agreed in writing to treat those materials and
13 information as Protected Material under the respective Protective Orders in the Coordinated
14 Actions. See Stipulation and Protective Order, *The People of the State of California v.*
15 *Amazon.com, Inc.*, No. CGC-22-601826 (Cal. Super. Ct. Jan. 27, 2023); Protective Order (ECF
16 90), *Frame-Wilson et al. v. Amazon.com, Inc.*, No. 2:20-cv-00424-JHC (W.D. Wash. Feb. 27,
17 2023); Stipulated Protective Order, *De Coster et al. v. Amazon.com, Inc.*, No. 2:21-cv-00693-JHC
18 (W.D. Wash. Mar. 15, 2023); Stipulated Protective Order (ECF 51), *Brown et al. v. Amazon.com,*
19 *Inc.*, No. 2:22-cv-00965-JHC (W.D. Wash. Oct. 16, 2023); Protective Order Granted, *District of*
20 *Columbia v. Amazon.com, Inc.*, No. 2021-CA-001775-B (D.C. Super. Ct., Oct. 25, 2024).
21 Coordinated Plaintiffs' Attorneys may disclose materials and information derived from such
22 materials designated by Amazon as Confidential or Highly Confidential – Attorneys' Eyes Only
23 under the Protective Orders in the Coordinated Actions to Plaintiffs. Plaintiffs will treat those
24 materials and information as Protected Material under the Protective Order in this Action.

25 11. Nothing in this Coordination Order permits any Party to take more than one
26 deposition of any witness without agreement of the Parties and witness or leave of Court.

III. DEPOSITIONS OF AMAZON WITNESSES FIRST NOTICED IN THIS ACTION

12. To the extent Plaintiffs seek the deposition of an Amazon Witness in the Action, Plaintiffs shall issue a deposition notice to Counsel for Amazon, for a date not sooner than forty-five (45) calendar days from the date the notice is served, and provide the deposition notice to the Coordinated Plaintiffs' Attorneys.

13. Within seven (7) calendar days after receiving a deposition notice (or within fourteen (14) calendar days for a former employee or officer of Amazon), Counsel for Amazon shall use best efforts to confirm Plaintiffs' proposed date or, to the extent the witness or counsel is unavailable, provide one or more alternative dates for the deposition. If alternative dates are provided, Counsel for Amazon shall use best efforts to provide at least one alternative date that is within fourteen (14) calendar days of Plaintiffs' initial proposed date, and will not propose any date that would require more than three (3) Amazon Witnesses to be deposed on the same date. The Parties shall thereafter meet and confer on a reasonable and appropriate date, time, and location for the noticed deposition.

14. Consistent with Federal Rule of Civil Procedure 30(d)(1) and the Court's Deposition Order, the Parties agree that Plaintiffs' examination of an Amazon Witness in a Coordinated Deposition shall be limited to no more than seven (7) hours on the record, with no more than seven (7) hours on the record per day, unless otherwise agreed to by all Parties and the Amazon Witness.

15. For any Coordinated Deposition of an Amazon Witness, the Parties agree that the examination by Plaintiffs and Coordinated Plaintiffs' Attorneys shall be limited to no more than a combined total of ten (10) hours on the record, with no more than seven (7) hours on the record per day unless otherwise agreed to all Parties and the Amazon Witness.

16. Notwithstanding the limit set forth in Paragraph 15, Plaintiffs and the Coordinated Plaintiffs' Attorneys may jointly designate up to sixteen (16) Amazon Witnesses, for whom the examination by Plaintiffs and the Coordinated Plaintiffs' Attorneys shall be limited to a combined

1 total of fourteen (14) hours on the record, with no more than seven (7) hours on the record per day
2 unless otherwise agreed to by the Amazon Witness. Plaintiffs and the Coordinated Plaintiffs'
3 Attorneys shall make such designations by written notice no later than thirty (30) calendar days
4 prior to the date of such deposition. If Amazon objects to any such designation, it will provide
5 written notice of that objection to Plaintiffs and the Coordinated Plaintiffs' Attorneys within five
6 (5) business days, and Amazon, Plaintiffs, and the Coordinated Plaintiffs' Attorneys will meet and
7 confer regarding that objection. If a dispute remains, Amazon may seek relief from the Court in
8 this action for Coordinated Depositions first noticed in this action; however, absent agreement of
9 the Parties or Order of the Court, the fourteen (14) hour limit shall apply to such deposition.

10 17. In the event Amazon seeks to coordinate testimony from one or more Amazon
11 Witnesses offered in response to a deposition notice to Amazon pursuant to Federal Rule of Civil
12 Procedure 30(b)(6) in this Action, Amazon shall identify the designated topics for which it
13 proposes offering coordinated testimony at the time Amazon serves its responses and objections
14 to such deposition notice. Amazon shall provide Plaintiffs with the relevant Rule 30(b)(6) or Cal.
15 Code Civ. Proc. § 2025.230 notice(s) and Amazon's responses and objections thereto, whether or
16 not Amazon is proposing coordination. Plaintiffs, in their sole discretion, may also propose
17 coordination for some or all Rule 30(b)(6) topics. Following a proposal for coordination by either
18 side, the Parties agree to meet and confer in good faith concerning the coordination of such
19 deposition, including the scope of testimony and appropriate time limits for said deposition. If no
20 party proposes coordination, or if the Parties are not able to reach an agreement regarding
21 coordination, Plaintiffs may, in their sole discretion, elect to proceed with the deposition on the
22 topics as noticed or as otherwise negotiated by the Parties. If the Parties are not able to reach an
23 agreement regarding coordination after meeting and conferring in good faith, Amazon shall not
24 refuse to designate a witness (or witnesses) or schedule a deposition(s) based on any disputes
25 regarding coordination unless Amazon files a motion for a Protective Order. Nothing in this
26

Paragraph shall affect Amazon's right to object to any deposition notice issued pursuant to Rule 30(b)(6) on any grounds.

**IV. DEPOSITIONS OF AMAZON WITNESSES FIRST NOTICED IN
COORDINATED ACTIONS**

18. In the event Amazon receives a deposition notice or subpoena for an Amazon Witness in any Coordinated Action, Counsel for Amazon shall promptly notify Plaintiffs and shall provide Plaintiffs with a copy of the deposition notice within seven (7) calendar days.

19. Upon receipt of a deposition notice from Amazon, and if Amazon's production of documents in response to Plaintiffs' discovery requests issued on or before July 1, 2024 has been substantially complete for at least thirty (30) calendar days, Plaintiffs shall have seven (7) calendar days to notify Counsel for Amazon in writing whether Plaintiffs intend to notice such Amazon Witness for deposition in the present Action such that the deposition will be a Coordinated Deposition, and whether Plaintiffs are reasonably able to proceed with such deposition on the date noticed in the Coordinated Action. If Amazon's production of documents in response to Plaintiffs' discovery requests issued on or before July 1, 2024 has not been substantially complete for at least thirty (30) calendar days at the time Amazon provides notice, Plaintiff may indicate its intent to participate in the deposition of the Amazon Witness, but shall not be required to give such notice until forty (40) days after Amazon substantially completes its production of documents in response to Plaintiffs' discovery requests issued on or before July 1, 2024.

20. To the extent Plaintiffs are not reasonably able to proceed with the deposition on the date noticed in the Coordinated Action, or to the extent Plaintiffs require reasonable additional time to prepare, Plaintiffs will use best efforts to coordinate with Amazon and Coordinated Plaintiffs' Attorneys to identify mutually agreeable dates for the Coordinated Deposition.

21. If Plaintiffs elect to participate in a Coordinated Deposition first noticed in a Coordinated Action, the provisions in Paragraphs 14 through 16 above shall apply.

1 22. If Amazon does not provide notice to Plaintiffs regarding a deposition notice issued
2 in Coordinated Action as required in Paragraph 18, any later notice by Amazon shall have no effect
3 on Plaintiffs' rights with respect to the deposition of that Amazon Witness in this Action.
4 However, Plaintiffs, in their sole discretion, may elect to participate in a Coordinated Deposition
5 of an Amazon Witness first noticed in a Coordinated Action by issuing a deposition notice for the
6 Amazon Witness. In such instance, the provisions in Paragraphs 14 to 16 above shall apply.

7 23. If Amazon provides notice to Plaintiffs regarding a deposition notice issued for an
8 Amazon Witness in a Coordinated Action as required in Paragraph 18, and Plaintiffs do not elect
9 to participate in a Coordinated Deposition for that Amazon Witness as required in Paragraph 19,
10 Plaintiffs may not seek a deposition of that same Amazon Witness in this Action without Amazon's
11 consent or leave of the Court. Nothing in this Paragraph, or otherwise in the Coordination Order,
12 bars Plaintiffs from seeking agreement from Amazon or leave of Court to take additional testimony
13 from any Amazon Witness based on documents produced by Amazon after the date Amazon
14 represents it has substantially completed its document production.

15 24. In the event Amazon receives a deposition notice to Amazon in its corporate
16 capacity in any Coordinated Action, Counsel for Amazon shall promptly notify Plaintiffs and shall
17 provide Plaintiffs with a copy of the deposition notice within seven (7) calendar days. Amazon
18 shall provide Plaintiffs with a copy of its responses and objections to any such deposition notice
19 contemporaneously with the service of Amazon's responses and objections. In the event either
20 Party seeks to coordinate testimony as to one or more topics in a deposition notice to Amazon in
21 its corporate capacity issued in any Coordinated Action, the Party seeking coordinated testimony
22 shall identify the designated topics for which it proposes coordinated testimony either (i) at the
23 time Amazon serves its responses and objections to such deposition notice (for Amazon); or
24 (ii) within fourteen (14) calendar days of receiving Amazon's responses and objections to such
25 deposition notice (for Plaintiffs). Thereafter, the Parties agree to meet and confer in good faith
26 concerning the coordination of such deposition, including the scope of testimony for any

1 coordinated proceeding and any appropriate time limits for said deposition. If the Parties are not
2 able to reach an agreement regarding coordination after meeting and conferring in good faith,
3 Amazon shall not refuse to designate a witness (or witnesses) or schedule a deposition(s) based on
4 any disputes regarding coordination unless Amazon files a motion for a Protective Order. Nothing
5 in this Paragraph shall affect Amazon's right to object to any deposition notice issued pursuant to
6 Rule 30(b)(6) on any grounds.

7 **V. NON-PARTY WITNESS DEPOSITION COORDINATION**

8 25. The Parties agree that a Party seeking the deposition of a Non-Party witness will
9 issue and send to the other Parties a deposition notice with a proposed date for the deposition,
10 which absent mutual agreement or leave of Court for good cause, shall not be set for a date any
11 earlier than forty-five (45) calendar days from the date the Party serves the deposition notice. A
12 Party may serve a deposition notice without first obtaining or issuing a subpoena to compel
13 attendance of the Non-Party witness at the deposition.

14 26. The Party receiving the deposition notice shall, within fourteen (14) calendar days,
15 advise the Party seeking the deposition as to whether it intends to cross-notice the deposition and
16 if so, shall either (i) confirm the proposed date, or (ii) propose reasonable alternative dates.

17 27. If the Party receiving the deposition notice intends to seek documents in connection
18 with the deposition of the Non-Party witness, the Party receiving the deposition notice shall also,
19 within fourteen (14) calendar days, serve any subpoena for production of such documents on the
20 Non-Party witness (or any other Non-Party affiliated with or previously affiliated with the Non-
21 Party witness, as applicable). The Party serving such a document subpoena on a Non-Party shall
22 use its best efforts to reach an agreement with the Non-Party regarding the scope and timing of
23 document production, or to otherwise enforce the subpoena, so as to not unreasonably delay the
24 taking of the Non-Party deposition noticed by the other Party.

25 28. If the Non-Party witness or their counsel is not reasonably available on the date
26 noticed, the noticing Party shall promptly notify all Parties, and the Parties shall meet and confer

1 within five (5) calendar days thereof regarding a date, time, and location for the noticed deposition
2 that is acceptable to all Parties and the Non-Party witness.

3 29. For depositions that are noticed by Plaintiffs and cross-noticed by Amazon, or vice
4 versa, the Parties agree to work in good faith to equally allocate the time available to question each
5 Non-Party witness between Amazon, on the one hand, and Plaintiffs and the Coordinated
6 Plaintiffs' Attorneys, on the other hand.

7 30. The Parties agree to work in good faith to minimize the burden on and
8 inconvenience to Non-Parties, including by discussing mutually agreeable modifications to the
9 date, time, and location for each deposition that will (i) allow for reasonable coordination with
10 depositions of the same Non-Party in the Coordinated Actions; (ii) allow the Parties a reasonable
11 opportunity to obtain documents related to the deposition from the Non-Party pursuant to a
12 subpoena in advance of any such deposition; and (iii) allow for reasonable coordination with
13 depositions of the same Non-Party in the *Mbadiwe* Action.

14
15 IT IS SO ORDERED

16 DATED this __ day of _____, 2024.

17
18 THE HONORABLE JOHN H. CHUN
19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26

EXHIBIT C

THE HONORABLE JOHN H. CHUN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION, et al.,

Plaintiffs,

v.

AMAZON.COM, INC., a corporation,

Defendant.

Case No. 2:23-cv-01495-JHC

~~[PLAINTIFFS' AMAZON'S~~
PROPOSED] DEPOSITION
COORDINATION PROTOCOL AND
ORDER

Plaintiffs Federal Trade Commission (“FTC”) and the states and territories of New York, Connecticut, Pennsylvania, Delaware, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, Oklahoma, Oregon, Puerto Rico, Rhode Island, Vermont, and Wisconsin, acting by and through their respective Attorneys General (“Plaintiff States,” and together with the FTC, “Plaintiffs”) and Defendant Amazon.com, Inc. (“Amazon”) have agreed and stipulated to certain issues regarding the coordination of deposition discovery between the above-referenced action (“Action”) and certain other matters, and hereby jointly submit this Stipulated Coordination Protocol and Proposed Order (“Coordination Order”) for approval and entry by the Court.

~~[PLAINTIFFS' PROPOSED] DEPOSITION~~
~~COORDINATION PROTOCOL~~ Amazon's
Proposed Deposition Coordination Protocol and
Order - 1
~~CASE NO.~~ (Case No. 2:23-cv-01495-JHC)

MORGAN, LEWIS & BOCKIUS LLP
~~FEDERAL TRADE~~
~~COMMISSION~~ ATTORNEYS AT LAW
600 ~~Pennsylvania~~ 1301 ~~SECOND~~ AVENUE,
NW SUITE 2800
SEATTLE, WASHINGTON, ~~DC 20580~~ 98101
(202) 326-2222 TEL +1.206.274.6400 FAX
+1.206.274.6401

I. DEFINITIONS

1. The following definitions shall apply for the purposes of this Order:

a. Amazon Witness: Any person who is (i) a current employee or officer of Amazon, or (ii) a former employee or officer of Amazon who is represented by Counsel for Amazon. Upon receipt of a deposition notice from Plaintiffs for a former employee or officer of Amazon, Counsel for Amazon shall promptly, and within no more than fourteen (14) calendar days, notify Plaintiffs in writing if the former employee or officer is represented by Counsel for Amazon. If Counsel for Amazon does not provide notice that it represents a former employee or officer within fourteen (14) calendar days, the deposition shall be governed by the provisions of Section V covering Non-Party witnesses, unless otherwise agreed to by the Parties.

b. Coordinated Actions: *The People of the State of California v. Amazon.com, Inc.*, No. CGC-22-601826 (Cal. Super. Ct.); *Frame-Wilson et al. v. Amazon.com, Inc.*, No. 2:20-cv-00424-JHC (W.D. Wash.); *De Coster et al. v. Amazon.com, Inc.*, No. 2:21-cv-00693-JHC (W.D. Wash.); *Brown et al. v. Amazon.com, Inc.*, No. 2:22-cv-00965-JHC (W.D. Wash.); *District of Columbia v. Amazon.com, Inc.*, No. 2021-CA-001775-B (D.C. Super. Ct.) *Mbadiwe et al. v. Amazon.com, Inc.*, No. 1:22-cv-9542-VSB (S.D.N.Y.); and any other civil action in or approaching active discovery involving substantially similar claims which is identified and agreed upon in writing by the Parties.

c. Coordinated Deposition: A deposition to be conducted pursuant to this Coordination Order that will be noticed and taken by Plaintiffs and Coordinated Plaintiffs' Attorneys for at least one of the Coordinated Actions.

d. Coordinated Plaintiffs' Attorneys: Counsel of record for plaintiffs in the Coordinated Actions.

e. Counsel for Amazon: Counsel of record for Amazon.com, Inc. in this Action and the Coordinated Actions.

~~f. Mbadiwe Action: Mbadiwe et al. v. Amazon.com, Inc., No. 1:22-cv-9542-VSB (S.D.N.Y.).~~

~~g. Mbadiwe Plaintiffs' Attorneys: Counsel of record for plaintiffs in the Mbadiwe Action.~~

f. ~~h.~~ Non-Party: Any natural person, partnership, corporation, association, or other legal entity not named as a Party in this Action.

g. ~~i.~~ Party or Parties: Any entity named as a plaintiff or defendant in this Action.

II. GENERAL PROVISIONS

2. This Coordination Order applies to the Parties in the Action, and provides protocols applicable to conducting deposition discovery in this Action. Nothing in this Coordination Order shall preclude or otherwise restrict Amazon from engaging in further or different coordination efforts in the Coordinated Actions or in any other action, but no such efforts by Amazon shall modify this Coordination Order, be binding on Plaintiffs, affect Plaintiffs' ability to take discovery in this Action, or otherwise have any effect on the present Action.

3. This Coordination Order shall be effective only upon agreement of the Parties, or by order of the Court.

4. Any Party may seek to later modify this Coordination Order for good cause. Prior to doing so, the Parties shall meet and confer in good faith regarding any proposed

~~[PLAINTIFFS' PROPOSED] DEPOSITION~~
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MORGAN, LEWIS & BOCKIUS LLP
~~FEDERAL TRADE~~
~~COMMISSION~~ ATTORNEYS AT LAW
600 Pennsylvania Avenue, NW
SUITE 2800
SEATTLE, WASHINGTON, DC 20580 98101
(202) 326-2222 TEL +1.206.274.6400 FAX
+1.206.274.6401

1 modifications. This Coordination Order may be amended only by subsequent written agreement
2 among the Parties, or by order of the Court.

3 5. Amazon represents that it is engaged in efforts to negotiate and have substantially
4 similar orders entered in each of the Coordinated Actions. To the extent that any dispute arises
5 related to terms on coordination contained in orders in the Coordinated Actions that differ from
6 or conflict with this Coordination Order, the Parties shall meet and confer to determine if
7 proposed modifications of this Coordination Order may be necessary to facilitate efficient
8 coordination with the Coordinated Actions.

9 6. Unless otherwise agreed to and ordered by this Coordination Order, discovery in
10 this Action shall be governed by the applicable provisions of the Federal Rules of Civil
11 Procedure, the Federal Rules of Evidence, the Court's Case Scheduling Order (ECF 159), Case
12 Management Order (ECF 161), and Order Re Deposition Limits (ECF 166) ("Deposition
13 Order"), any other Court order in this Action, and any other applicable rules or orders that would
14 apply to govern discovery in the absence of this Coordination Order.

15 7. All Parties reserve all rights to formally object (by motion or otherwise) to any
16 deposition or deposition examination on any grounds and seek appropriate relief from the Court
17 as warranted, including with respect to the taking of any deposition or to the timing or scope of
18 any deposition in this Action.

19 8. Only depositions noticed by a Party in this Action shall be treated as having been
20 noticed and taken in this Action, absent an agreement between the Parties to the contrary. Any
21 testimony by an Amazon Witness or a Non-Party witness in a Coordinated Deposition shall be
22 considered deposition testimony given in this Action, whether the examination was conducted by
23 Plaintiffs, by Coordinated Plaintiffs' Attorneys, or by Counsel for Amazon. The Parties reserve
24 all rights to object to the admissibility or use of such testimony pursuant to the applicable rules.

25 ~~[PLAINTIFFS' PROPOSED] DEPOSITION~~
26 ~~COORDINATION PROTOCOL~~ Amazon's
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MORGAN, LEWIS & BOCKIUS LLP
~~FEDERAL TRADE~~
~~COMMISSION~~ ATTORNEYS AT LAW
600 ~~Pennsylvania~~ 1301 ~~SECOND~~ AVENUE,
NW SUITE 2800
SEATTLE, WASHINGTON, ~~DC 20580~~ 98101
(202) 326-2222 TEL +1.206.274.6400 FAX
+1.206.274.6401

9. For any Coordinated Deposition, the Parties agree that the Parties, the Coordinated Plaintiffs' Attorneys, and Counsel for Amazon in the Coordinated Actions may attend and participate in such Coordinated Depositions to the fullest extent permitted under the applicable rules, including this Coordination Order and any Order of the Court in this Action.⁺ With respect to any materials or testimony designated Confidential or Highly Confidential – Attorneys' Eyes Only, the Parties' obligations will be governed by the Protective Order in this Action. The obligations of Amazon's Counsel in the Coordinated Actions and the Coordinated Plaintiffs' Attorneys will be governed by the respective Protective Orders in the Coordinated Actions. ~~The obligations of Amazon's Counsel and the Mbadiwe Plaintiffs' Attorneys will be governed by the Protective Order in the Mbadiwe Action.~~

10. To facilitate coordinated depositions of witnesses between this Action and the Coordinated Actions, Plaintiffs may disclose materials and information derived from such materials designated by Amazon as Confidential or Highly Confidential – Attorneys' Eyes Only under the February 13, 2024 Protective Order ("Protective Order") (ECF 160) to Coordinated Plaintiffs' Attorneys, provided that (i) such materials are reasonably necessary to facilitate such coordinated depositions, including discussions about potential coordinated depositions of Amazon Witnesses, potential coordinated depositions of Amazon pursuant to Rule 30(b)(6) and/or Cal. Code Civ. Proc. § 2025.230, or potential coordinated depositions of Non-Party witnesses; and (ii) such Coordinated Plaintiffs' Attorneys have agreed in writing to treat those materials and information as Protected Material under the respective Protective Orders in the Coordinated Actions. *See Stipulation and Protective Order, The People of the State of California*

~~⁺ Plaintiffs further agree that the Mbadiwe Plaintiffs' Attorneys and Counsel for Amazon in the Mbadiwe Action may attend, but will not participate in, Coordinated Depositions where the witness has been noticed for a deposition in the Mbadiwe Action (for Amazon Witnesses) or has been subpoenaed for a deposition in the Mbadiwe Action (for Non-Party witnesses). Plaintiffs acknowledge that the Mbadiwe Plaintiffs, Amazon, and Non-Parties, as applicable, may agree on separate deposition time for the Mbadiwe Action after any such Coordinated Deposition.~~

~~[PLAINTIFFS' PROPOSED] DEPOSITION~~
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MORGAN, LEWIS & BOCKIUS LLP
FEDERAL TRADE
COMMISSION ATTORNEYS AT LAW
600 Pennsylvania Avenue, NW
SUITE 2800
SEATTLE, WASHINGTON, DC 98101
(202) 326-2222 TEL +1.206.274.6400 FAX
+1.206.274.6401

1 *v. Amazon.com, Inc.*, No. CGC-22-601826 (Cal. Super. Ct. Jan. 27, 2023); Protective Order
 2 (ECF 90), *Frame-Wilson et al. v. Amazon.com, Inc.*, No. 2:20-cv-00424-JHC (W.D. Wash. Feb.
 3 27, 2023); Stipulated Protective Order, *De Coster et al. v. Amazon.com, Inc.*, No.
 4 2:21-cv-00693-JHC (W.D. Wash. Mar. 15, 2023); Stipulated Protective Order (ECF 51), *Brown*
 5 *et al. v. Amazon.com, Inc.*, No. 2:22-cv-00965-JHC (W.D. Wash. Oct. 16, 2023); Protective
 6 Order Granted, *District of Columbia v. Amazon.com, Inc.*, No. 2021-CA-001775-B (D.C. Super.
 7 Ct., Oct. 25, 2024). Coordinated Plaintiffs' Attorneys may disclose materials and information
 8 derived from such materials designated by Amazon as Confidential or Highly Confidential –
 9 Attorneys' Eyes Only under the Protective Orders in the Coordinated Actions to Plaintiffs.
 10 Plaintiffs will treat those materials and information as Protected Material under the Protective
 11 Order in this Action.

12 11. Nothing in this Coordination Order permits any Party to take more than one
 13 deposition of any witness without agreement of the Parties and witness or leave of Court.

14 **III. DEPOSITIONS OF AMAZON WITNESSES FIRST NOTICED IN THIS ACTION**

15 12. To the extent Plaintiffs seek the deposition of an Amazon Witness in the Action,
 16 Plaintiffs shall issue a deposition notice to Counsel for Amazon, for a date not sooner than
 17 forty-five (45) calendar days from the date the notice is served, and provide the deposition notice
 18 to the Coordinated Plaintiffs' Attorneys.

19 13. Within seven (7) calendar days after receiving a deposition notice (or within
 20 fourteen (14) calendar days for a former employee or officer of Amazon), Counsel for Amazon
 21 shall use best efforts to confirm Plaintiffs' proposed date or, to the extent the witness or counsel
 22 is unavailable, provide one or more alternative dates for the deposition. If alternative dates are
 23 provided, Counsel for Amazon shall use best efforts to provide at least one alternative date that
 24 is within fourteen (14) calendar days of Plaintiffs' initial proposed date, and will not propose any

25 ~~[PLAINTIFFS' PROPOSED] DEPOSITION~~
 26 ~~COORDINATION PROTOCOL~~ Amazon's
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MORGAN, LEWIS & BOCKIUS LLP
~~FEDERAL TRADE~~
~~COMMISSION~~ ATTORNEYS AT LAW
 600 Pennsylvania Avenue,
 NW SUITE 2800
 SEATTLE, WASHINGTON, DC 20580 98101
 (202) 326-2222 TEL +1.206.274.6400 FAX
 +1.206.274.6401

1 date that would require more than three (3) Amazon Witnesses to be deposed on the same date.
 2 The Parties shall thereafter meet and confer on a reasonable and appropriate date, time, and
 3 location for the noticed deposition.

4 14. Consistent with Federal Rule of Civil Procedure 30(d)(1) and the Court's
 5 Deposition Order, the Parties agree that Plaintiffs' examination of an Amazon Witness in a
 6 Coordinated Deposition shall be limited to no more than seven (7) hours on the record, with no
 7 more than seven (7) hours on the record per day, unless otherwise agreed to by all Parties and the
 8 Amazon Witness.

9 15. For any Coordinated Deposition of an Amazon Witness, the Parties agree that the
 10 examination by Plaintiffs and Coordinated Plaintiffs' Attorneys shall be limited to no more than
 11 a combined total of ten (10) hours on the record, with no more than seven (7) hours on the record
 12 per day unless otherwise agreed to all Parties and the Amazon Witness.

13 16. Notwithstanding the limit set forth in Paragraph 15, Plaintiffs and the Coordinated
 14 Plaintiffs' Attorneys may jointly designate up to ~~sixteen~~eight (~~16~~8) Amazon Witnesses, where
 15 the Amazon Witness has not previously testified in a pre-Complaint investigational hearing in
 16 this Action or any of the Coordinated Actions, for whom the examination by Plaintiffs and the
 17 Coordinated Plaintiffs' Attorneys shall be limited to a combined total of fourteen (14) hours on
 18 the record, with no more than seven (7) hours on the record per day unless otherwise agreed to
 19 by the Amazon Witness. Plaintiffs and the Coordinated Plaintiffs' Attorneys shall make such
 20 designations by written notice no later than thirty (30) calendar days prior to the date of such
 21 deposition. If Amazon objects to any such designation, it will provide written notice of that
 22 objection to Plaintiffs and the Coordinated Plaintiffs' Attorneys within five (5) business days,
 23 and Amazon, Plaintiffs, and the Coordinated Plaintiffs' Attorneys will meet and confer regarding
 24 that objection. If a dispute remains, Amazon may seek relief from the Court in this action for

25 ~~[PLAINTIFFS' PROPOSED] DEPOSITION~~
 26 ~~COORDINATION PROTOCOL~~ Amazon's
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MORGAN, LEWIS & BOCKIUS LLP
~~FEDERAL TRADE~~
~~COMMISSION~~ ATTORNEYS AT LAW
~~600 Pennsylvania~~ 1301 SECOND AVENUE,
~~NW~~ SUITE 2800
~~SEATTLE, WASHINGTON, DC 20580~~ 98101
~~(202) 326-2222~~ TEL +1.206.274.6400 FAX
+1.206.274.6401

Coordinated Depositions first noticed in this action; however, absent agreement of the Parties or Order of the Court, the fourteen (14) hour limit shall apply to such deposition.

17. In the event Amazon seeks to coordinate testimony from one or more Amazon Witnesses offered in response to a deposition notice to Amazon pursuant to Federal Rule of Civil Procedure 30(b)(6) in this Action, Amazon shall identify the designated topics for which it proposes offering coordinated testimony at the time Amazon serves its responses and objections to such deposition notice. Amazon shall provide Plaintiffs with the relevant Rule 30(b)(6) or Cal. Code Civ. Proc. § 2025.230 notice(s) and Amazon's responses and objections thereto, whether or not Amazon is proposing coordination. Plaintiffs, in their sole discretion, may also propose coordination for some or all Rule 30(b)(6) topics. Following a proposal for coordination by either side, the Parties agree to meet and confer in good faith concerning the coordination of such deposition, including the scope of testimony and appropriate time limits for said deposition. If no party proposes coordination, or if the Parties are not able to reach an agreement regarding coordination, Plaintiffs may, in their sole discretion, elect to proceed with the deposition on the topics as noticed or as otherwise negotiated by the Parties. If the Parties are not able to reach an agreement regarding coordination after meeting and conferring in good faith, Amazon shall not refuse to designate a witness (or witnesses) or schedule a deposition(s) based on any disputes regarding coordination unless Amazon files a motion for a Protective Order. Nothing in this Paragraph shall affect Amazon's right to object to any deposition notice issued pursuant to Rule 30(b)(6) on any grounds.

~~[PLAINTIFFS' PROPOSED] DEPOSITION~~
~~COORDINATION PROTOCOL~~ Amazon's
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MORGAN, LEWIS & BOCKIUS LLP
~~FEDERAL TRADE~~
~~COMMISSION~~ ATTORNEYS AT LAW
~~600 Pennsylvania~~ 1301 SECOND AVENUE,
~~NW~~ SUITE 2800
~~SEATTLE, WASHINGTON, DC 20580~~ 98101
~~(202) 326-2222~~ TEL +1.206.274.6400 FAX
+1.206.274.6401

**IV. DEPOSITIONS OF AMAZON WITNESSES FIRST NOTICED IN
COORDINATED ACTIONS**

18. In the event Amazon receives a deposition notice or subpoena for an Amazon Witness in any Coordinated Action, Counsel for Amazon shall promptly notify Plaintiffs and shall provide Plaintiffs with a copy of the deposition notice within seven (7) calendar days.

19. Upon receipt of a deposition notice from Amazon, and if Amazon's production of documents in response to Plaintiffs' discovery requests issued on or before July 1, 2024 has been substantially complete for at least thirty (30) calendar days, Plaintiffs shall have seven (7) calendar days to notify Counsel for Amazon in writing whether Plaintiffs intend to notice such Amazon Witness for deposition in the present Action such that the deposition will be a Coordinated Deposition, and whether Plaintiffs are reasonably able to proceed with such deposition on the date noticed in the Coordinated Action. If Amazon's production of documents in response to Plaintiffs' discovery requests issued on or before July 1, 2024 has not been substantially complete for at least thirty (30) calendar days at the time Amazon provides notice, Plaintiff may indicate its intent to participate in the deposition of the Amazon Witness, but shall not be required to give such notice until forty (40) days after Amazon substantially completes its production of documents in response to Plaintiffs' discovery requests issued on or before July 1, 2024.

20. To the extent Plaintiffs are not reasonably able to proceed with the deposition on the date noticed in the Coordinated Action, or to the extent Plaintiffs require reasonable additional time to prepare, Plaintiffs will use best efforts to coordinate with Amazon and Coordinated Plaintiffs' Attorneys to identify mutually agreeable dates for the Coordinated Deposition.

~~[PLAINTIFFS' PROPOSED] DEPOSITION~~
~~COORDINATION PROTOCOL~~ Amazon's
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MORGAN, LEWIS & BOCKIUS LLP
~~FEDERAL TRADE~~
~~COMMISSION~~ ATTORNEYS AT LAW
600 Pennsylvania Avenue,
N.W. SUITE 2800
SEATTLE, WASHINGTON, ~~DC 20580~~ 98101
(202) 326-2222 TEL +1.206.274.6400 FAX
+1.206.274.6401

21. If Plaintiffs elect to participate in a Coordinated Deposition first noticed in a Coordinated Action, the provisions in Paragraphs 14 through 16 above shall apply.

22. If Amazon does not provide notice to Plaintiffs regarding a deposition notice issued in Coordinated Action as required in Paragraph 18, any later notice by Amazon shall have no effect on Plaintiffs' rights with respect to the deposition of that Amazon Witness in this Action. However, Plaintiffs, in their sole discretion, may elect to participate in a Coordinated Deposition of an Amazon Witness first noticed in a Coordinated Action by issuing a deposition notice for the Amazon Witness. In such instance, the provisions in Paragraphs 14 to 16 above shall apply.

23. If Amazon provides notice to Plaintiffs regarding a deposition notice issued for an Amazon Witness in a Coordinated Action as required in Paragraph 18, and Plaintiffs do not elect to participate in a Coordinated Deposition for that Amazon Witness as required in Paragraph 19, Plaintiffs may not seek a deposition of that same Amazon Witness in this Action without Amazon's consent or leave of the Court. Nothing in this Paragraph, or otherwise in the Coordination Order, bars Plaintiffs from seeking agreement from Amazon or leave of Court to take additional testimony from any Amazon Witness based on documents produced by Amazon after the date Amazon represents it has substantially completed its document production.

24. In the event Amazon receives a deposition notice to Amazon in its corporate capacity in any Coordinated Action, Counsel for Amazon shall promptly notify Plaintiffs and shall provide Plaintiffs with a copy of the deposition notice within seven (7) calendar days. Amazon shall provide Plaintiffs with a copy of its responses and objections to any such deposition notice contemporaneously with the service of Amazon's responses and objections. In the event either Party seeks to coordinate testimony as to one or more topics in a deposition notice to Amazon in its corporate capacity issued in any Coordinated Action, the Party seeking

~~[PLAINTIFFS' PROPOSED] DEPOSITION~~
~~COORDINATION PROTOCOL~~ Amazon's
Proposed Deposition Coordination Protocol and
Order - 10
~~CASE NO.~~ (Case No. 2:23-cv-01495-JHC)

MORGAN, LEWIS & BOCKIUS LLP
~~FEDERAL TRADE~~
~~COMMISSION~~ ATTORNEYS AT LAW
~~600 Pennsylvania~~ 1301 SECOND AVENUE,
~~NW~~ SUITE 2800
~~SEATTLE, WASHINGTON, DC 20580~~ 98101
~~(202) 326-2222~~ TEL +1.206.274.6400 FAX
+1.206.274.6401

coordinated testimony shall identify the designated topics for which it proposes coordinated testimony either (i) at the time Amazon serves its responses and objections to such deposition notice (for Amazon); or (ii) within fourteen (14) calendar days of receiving Amazon's responses and objections to such deposition notice (for Plaintiffs). Thereafter, the Parties agree to meet and confer in good faith concerning the coordination of such deposition, including the scope of testimony for any coordinated proceeding and any appropriate time limits for said deposition. If the Parties are not able to reach an agreement regarding coordination after meeting and conferring in good faith, Amazon shall not refuse to designate a witness (or witnesses) or schedule a deposition(s) based on any disputes regarding coordination unless Amazon files a motion for a Protective Order. Nothing in this Paragraph shall affect Amazon's right to object to any deposition notice issued pursuant to Rule 30(b)(6) on any grounds.

V. NON-PARTY WITNESS DEPOSITION COORDINATION

25. The Parties agree that a Party seeking the deposition of a Non-Party witness will issue and send to the other Parties a deposition notice with a proposed date for the deposition, which absent mutual agreement or leave of Court for good cause, shall not be set for a date any earlier than forty-five (45) calendar days from the date the Party serves the deposition notice. A Party may serve a deposition notice without first obtaining or issuing a subpoena to compel attendance of the Non-Party witness at the deposition.

26. The Party receiving the deposition notice shall, within fourteen (14) calendar days, advise the Party seeking the deposition as to whether it intends to cross-notice the deposition and if so, shall either (i) confirm the proposed date, or (ii) propose reasonable alternative dates.

27. If the Party receiving the deposition notice intends to seek documents in connection with the deposition of the Non-Party witness, the Party receiving the deposition

~~[PLAINTIFFS' PROPOSED] DEPOSITION~~
~~COORDINATION PROTOCOL~~ Amazon's
Proposed Deposition Coordination Protocol and
Order - 11
~~CASE NO.~~ (Case No. 2:23-cv-01495-JHC)

MORGAN, LEWIS & BOCKIUS LLP
~~FEDERAL TRADE~~
~~COMMISSION~~ ATTORNEYS AT LAW
~~600 Pennsylvania~~ 1301 SECOND AVENUE,
~~NW~~ SUITE 2800
~~SEATTLE, WASHINGTON, DC 20580~~ 98101
~~(202) 326-2222~~ TEL +1.206.274.6400 FAX
+1.206.274.6401

notice shall also, ~~within~~without fourteen (14) calendar days, serve any subpoena for production of such documents on the Non-Party witness (or any other Non-Party affiliated with or previously affiliated with the Non-Party witness, as applicable). The Party serving such ~~a~~ document subpoena on a Non-Party shall use its best efforts to reach an agreement with the Non-Party regarding the scope and timing of document production, or to otherwise enforce the subpoena, so as to not unreasonably delay the taking of the Non-Party deposition noticed by the other Party.

28. If the Non-Party witness or their counsel is not reasonably available on the date noticed, the noticing Party shall promptly notify all Parties, and the Parties shall meet and confer within five (5) calendar days thereof regarding a date, time, and location for the noticed deposition that is acceptable to all Parties and the Non-Party witness.

29. For depositions that are noticed by Plaintiffs and cross-noticed by Amazon, or vice versa, the Parties agree to work in good faith to equally allocate the time available to question each Non-Party witness between Amazon, on the one hand, and Plaintiffs and the Coordinated Plaintiffs' Attorneys, on the other hand.

30. The Parties agree to work in good faith to minimize the burden on and inconvenience to Non-Parties, including by discussing mutually agreeable modifications to the date, time, and location for each deposition that will (i) allow for reasonable coordination with depositions of the same Non-Party in the Coordinated Actions; and (ii) allow the Parties a reasonable opportunity to obtain documents related to the deposition from the Non-Party pursuant to a subpoena in advance of any such deposition; ~~and (iii) allow for reasonable coordination with depositions of the same Non-Party in the Mbadiwe Action.~~

IT IS SO ORDERED

~~[PLAINTIFFS' PROPOSED] DEPOSITION~~
~~COORDINATION PROTOCOL~~ Amazon's
Proposed Deposition Coordination Protocol and
Order - 12
~~CASE NO.~~ (Case No. 2:23-cv-01495-JHC)

MORGAN, LEWIS & BOCKIUS LLP
~~FEDERAL TRADE~~
~~COMMISSION~~ ATTORNEYS AT LAW
~~600 Pennsylvania~~ 1301 SECOND AVENUE,
~~NW~~ SUITE 2800
~~SEATTLE, WASHINGTON, DC 20580~~ 98101
~~(202) 326-2222~~ TEL +1.206.274.6400 FAX
+1.206.274.6401

DATED this ____ day of _____, ~~2024~~2023.

THE HONORABLE JOHN H. CHUN
UNITED STATES DISTRICT JUDGE

~~{PLAINTIFFS' PROPOSED} DEPOSITION~~
~~COORDINATION PROTOCOL~~ Amazon's
Proposed Deposition Coordination Protocol and
Order - 13
~~CASE NO.~~ (Case No. 2:23-cv-01495-JHC)

MORGAN, LEWIS & BOCKIUS LLP
~~FEDERAL TRADE~~
~~COMMISSION~~ ATTORNEYS AT LAW
~~600 Pennsylvania~~ 1301 SECOND AVENUE,
~~NW~~ SUITE 2800
~~SEATTLE, WASHINGTON, DC 20580~~ 98101
~~(202) 326-2222~~ TEL +1.206.274.6400 FAX
+1.206.274.6401

EXHIBIT D

FILED
San Francisco County Superior Court

APR 17 2024

CLERK OF THE COURT
BY: Christina Green
Deputy Clerk

1 ROB BONTA (SBN 202668)
Attorney General of California
2 PAULA BLIZZARD (SBN 207920)
Senior Assistant Attorney General
3 NATALIE S. MANZO (SBN 155655)
JAMIE L. MILLER (SBN 271452)
4 Supervising Deputy Attorney General
ROBERT B. McNARY (SBN 253745)
5 STEPHEN R. SMEREK (SBN 208343)
Deputy Attorneys General
6 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
7 Telephone: (213) 269-6000

8 *Attorneys for Plaintiff and Cross-Defendant*
The People of the State of California

9
10 HEIDI K. HUBBARD (*pro hac vice*)
WILLIAMS & CONNOLLY LLP
680 Maine Ave. SW
11 Washington, DC 20024
Tel.: (202) 434-5000

12 Jeffrey M. Davidson (Bar No. 248620)
13 COVINGTON & BURLING, LLP
415 Mission Street, Suite 5400
14 San Francisco, CA 94105
Tel: (415) 591-6000

15 *Attorneys for Defendant and Cross-Complainant*
16 *Amazon.com, Inc.*

17 (*additional counsel listed below*)

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **COUNTY OF SAN FRANCISCO**

21 **THE PEOPLE OF THE STATE OF**
CALIFORNIA,

22 Plaintiff / Cross-Defendant,

23 v.

24 **AMAZON.COM, INC.,**

25 Defendant / Cross-Complainant.

CASE NO. CGC-22-601826

STIPULATED COORDINATION
PROTOCOL AND [PROPOSED] ORDER

Dept.: 304

Judge: Hon. Ethan P. Schulman

Case Filed: September 15, 2022

Trial Date: August 10, 2026

Plaintiff The People of the State of California (“The People”) and Defendant Amazon.com, Inc. (“Amazon”) have agreed and stipulated to certain issues regarding the coordination of deposition discovery in the above-referenced action (“Action”), and hereby jointly submit this Stipulated Coordination Protocol and Proposed Order (“Coordination Order”) for approval and entry by the Court.

I. DEFINITIONS

1. The following definitions shall apply for the purposes of this Order:

a. Amazon Representative: Any person who is identified to testify on Amazon’s behalf as a corporate representative in response to a deposition notice of Amazon.

b. Amazon Witness: Any person who is (i) a current employee or officer of Amazon, (ii) a former employee or officer of Amazon who is represented by Counsel for Amazon. Upon receipt of a deposition notice from The People for a former employee or officer of Amazon, Counsel for Amazon shall have fourteen (14) calendar days to notify The People in writing if the former employee or officer is represented by Counsel for Amazon. If Counsel for Amazon does not provide notice that it represents a former employee or officer within fourteen (14) calendar days, the deposition shall be governed by the provisions of Section V covering Non-Party witnesses, unless otherwise agreed to by the Parties.

c. Coordinated Deposition: A deposition conducted pursuant to this Coordination Order wherein Other Plaintiffs’ Attorneys for at least one of the Other Pending Actions participate in said deposition.

d. Counsel for Amazon: Counsel of record for Amazon.com, Inc. in this Action.

e. Non-Party: Any natural person, partnership, corporation, association, or other legal entity not named as a Party.

f. Other Pending Actions: *Frame-Wilson et al. v. Amazon.com Inc.*, No. 2:20-cv-00424-JHC (W.D. Wa.); *De Coster et al. v. Amazon.com, Inc.*, No. 2:21-cv-00693-JHC (W.D. Wa.); *Brown et al. v. Amazon.com, Inc.*, No. 22-cv-00965-JHC (W.D. Wa.); *Federal Trade Commission, et al. v. Amazon.com, Inc.*, No. 2:23-cv-01495-JHC (W.D. Wa.); and any other civil action in or approaching active discovery involving substantially similar claims, which is identified and agreed by the Parties in writing.

g. Other Plaintiffs' Attorneys: Counsel of record for plaintiffs in the Other Pending Actions as identified in the preceding subparagraph d.

h. Party or Parties: Any entity named a plaintiff or defendant in this Action.

II. GENERAL PROVISIONS

2. This Coordination Order shall be effective only upon agreement of the Parties and approval of the Court.

3. The close of fact discovery shall be extended to August 8, 2025. The Parties shall meet and confer and present the Court with proposed adjustments to the balance of the pretrial schedule within thirty (30) calendar days of the execution and entry of this Coordination Order.

4. This Coordination Order applies to the Parties in the Action, and provides protocols applicable to conducting deposition discovery in this Action. Nothing in this Coordination Order shall preclude or otherwise restrict Amazon from engaging in further coordination efforts in the Other Pending Actions or in any other action, but no such efforts by Amazon shall modify this Coordination Order, be binding on The People, or otherwise have any effect on the present Action.

5. Either Party may seek to later modify this Coordination Order for good cause. Prior to doing so, the Parties shall meet and confer in good faith to reach agreement as to the appropriate scope of any modifications. For the avoidance of doubt, this Coordination Order may be amended only by subsequent written stipulation among the Parties and a corresponding approval by the Court; however, if the Parties jointly agree, they may agree to modify the time periods for providing notice set forth herein without modification of this Coordination Order or the Court's approval.

6. Amazon represents that it is engaged in efforts to negotiate and have substantially similar orders entered in each of the Other Pending Actions. To the extent that any dispute arises regarding the conduct of Coordinated Depositions related to terms of coordination contained in orders entered in Other Pending Actions that differ from or conflict with this Coordination Order, the Parties shall meet and confer to determine if modifications of this Coordination Order may be necessary to facilitate efficient coordination with the Other Pending Actions.

7. Unless otherwise expressly agreed to and ordered by this Coordination Order, discovery in this Action shall be governed by the applicable provisions of the California Rules of Court, the California

1 Code of Civil Procedure, and the California Evidence Code, and any other applicable provisions that
2 would apply to govern discovery in the absence of this Coordination Order.

3 8. Both Parties reserve all rights to formally object (by motion or otherwise) to any deposition
4 or deposition examination on any grounds and seek appropriate relief from the Court as warranted. For
5 the avoidance of doubt, and notwithstanding anything in this Coordination Order, Amazon shall retain all
6 rights to object (by motion or otherwise) to the taking of a particular deposition or to the timing or length
7 of such a deposition in this Action or in the Other Pending Actions. For the further avoidance of doubt,
8 and notwithstanding anything in this Coordination Order, The People shall retain all rights to seek (by
9 motion or otherwise) additional time for the taking of a particular deposition in this Action.

10 9. For any Coordinated Deposition, each Party or Other Plaintiffs' Attorneys may notice, take,
11 defend, or otherwise participate in any such deposition either in person, or remotely, in their sole discretion
12 notwithstanding how any other Party or Other Plaintiffs' Attorneys elect to notice, take, defend, or
13 otherwise participate in such deposition. For the avoidance of doubt, if a deposition is noticed to take
14 place in person, nothing in this Coordination Order shall permit the witness to appear other than in person
15 except by agreement of the noticing Party.

16 10. For the avoidance of doubt, any testimony in a Coordinated Deposition will be deposition
17 testimony given in this Action whether the examination was conducted by The People or Other Plaintiffs'
18 Attorneys. For the further avoidance of doubt, both Parties reserve all rights to object to the admissibility
19 of such testimony pursuant to the applicable provisions of the California Rules of Court, the California
20 Code of Civil Procedure, the California Evidence Code, and any other applicable law.

21 11. With respect to any Coordinated Deposition of an Amazon Witness or Amazon
22 Representative that The People intend to notice pursuant to this Coordination Order, the Parties agree that
23 The People may share (and receive from the Other Plaintiffs' Attorneys) materials produced by Amazon
24 in this Action that are reasonably contemplated by The People to be shown to the witness subject to a
25 Coordinated Deposition, or necessary to understand the import of such documents, or information derived
26 from such materials, designated by Amazon as Confidential or Highly Confidential – Attorneys' Eyes
27 Only under the January 27, 2023 Stipulation and Protective Order (the "Protective Order") with any
28 participating Other Plaintiffs' Attorneys for the sole purpose of preparing for and/or taking such

Coordinated Deposition provided that such Other Plaintiffs' Attorneys agree to maintain the confidentiality of such materials as if they had been so designated under the operative protective orders entered in the Other Pending Actions. For the avoidance of doubt, the sharing contemplated by this Paragraph shall be constrained to what is reasonably necessary for the purposes of executing Coordinated Depositions and shall not generally supersede or negate discovery limitations or protective order restrictions otherwise applicable in each individual case.

12. For the further avoidance of doubt, nothing in this Coordination Order permits any Party to take more than one deposition of any witness without agreement of the Parties and witness and/or leave of Court.

III. DEPOSITIONS OF AMAZON AND AMAZON WITNESSES FIRST NOTICED IN THIS ACTION

13. To the extent The People seek the deposition of Amazon or an Amazon Witness in the Action, The People shall issue a deposition notice to Counsel for Amazon, for a date not sooner than sixty (60) calendar days from the date the notice is served. Counsel for Amazon shall provide the deposition notice to the Other Plaintiffs' Attorneys for the purpose of facilitating potential coordination of such deposition as may be appropriate in connection with the Other Pending Actions.

14. Counsel for Amazon shall use best efforts to confirm The People's proposed date or, to the extent the witness or counsel is unavailable, provide one or more alternative dates for the deposition within fourteen (14) calendar days of receiving The People's deposition notice. If alternative dates are provided, Counsel for Amazon shall use best efforts to provide at least one alternative date within fourteen (14) calendar days of The People's initial proposed date. The Parties shall thereafter meet and confer on a reasonable and appropriate date, time, and location for the noticed deposition.

15. Notwithstanding anything in this Coordination Order, The People shall retain all rights to depose any Amazon Witness by providing the notice required by statute if the sixty (60) day notice period contemplated herein would require the deposition of Amazon or an Amazon Witness to take place after the close of fact discovery in this Action. If the witness is not reasonably available on the date noticed, Amazon shall promptly notify The People, and the Parties shall meet and confer within five (5) calendar days thereof regarding a reasonable and appropriate date, time, and location for the noticed deposition,

1 which may be conducted after the close of fact discovery in the event the Amazon Witness cannot
2 reasonably be made available on an earlier agreed-date.

3 16. The Parties agree that the Parties, Other Plaintiffs' Attorneys, and Counsel for Amazon in
4 the Other Pending Actions may attend and participate in Coordinated Depositions to the fullest extent
5 permitted under applicable rules, including this Coordination Order and any Order of the Court in this
6 Action. The Parties' use of Coordinated Deposition testimony, or exhibits, designated as "Confidential"
7 or Highly-Confidential" shall be governed by the Protective Order (and use of such materials by Other
8 Plaintiffs' Attorneys shall be governed by the operative protective orders entered in the Other Pending
9 Actions) provided that no Party, their counsel, or Other Plaintiffs' Attorneys shall be excluded from any
10 portion of a Coordinated Deposition or prohibited access to deposition exhibits marked at a Coordinated
11 Deposition. For the avoidance of doubt, both Parties reserve all rights to object to the admissibility of
12 such testimony pursuant to the applicable provisions of the California Rules of Court, the California Code
13 of Civil Procedure, the California Evidence Code, and any other applicable law.

14 17. For any deposition of an Amazon Witness where Amazon provided notice to the Other
15 Plaintiffs' Attorneys contemplated by Paragraph 13, but the Other Plaintiffs' Attorneys do not participate,
16 the Parties agree that the examination by The People generally shall be limited to no more than one (1)
17 day, with no more than seven (7) hours on the record.

18 18. For any Coordinated Deposition of an Amazon Witness, the Parties agree that examination
19 by The People and Other Plaintiffs' Attorneys shall be limited to no more than a combined total of ten
20 (10) hours on the record, with no more than seven (7) hours on the record per day unless otherwise agreed
21 to by the Amazon Witness.

22 19. Notwithstanding the limit set forth in Paragraphs 17 and 18, The People, together with
23 Other Plaintiffs' Attorneys, may identify up to a combined total of eight (8) Amazon Witnesses, where
24 the Amazon Witness has not previously testified in a pre-Complaint investigational hearing in this Action
25 or any of the Other Pending Actions, for whom their Coordinated Deposition shall be limited to no more
26 than a combined total of fourteen (14) hours on the record, with no more than seven (7) hours per day
27 unless otherwise agreed by the Parties and the Amazon Witness. The People, and the Other Plaintiffs'
28 Attorneys, shall identify such Amazon Witnesses by providing Counsel for Amazon with written notice

no later than thirty (30) calendar days prior to the date of such deposition. Amazon reserves the right to object to such extended deposition time limit for any specific Amazon Witness by providing written notice of such objection to The People, and Other Plaintiffs' Attorneys, within five (5) business days. Thereafter, the Parties shall meet and confer to try to resolve any such objection. If a dispute remains, Amazon may seek relief from the Court in this action for Coordinated Depositions first noticed in this action; however, absent agreement of the Parties or Order of the Court, the fourteen (14) hour limit shall apply to such deposition.

20. Notwithstanding the time limits set forth in Paragraphs 18 and 19, should Amazon agree to higher time limits for any Coordinated Depositions, or should any order in the Other Pending Actions be entered permitting higher time limits for any Coordinated Depositions, such higher time limits shall apply to any such Coordinated Depositions taken in this action.

21. In the event Amazon seeks to coordinate testimony from one or more Amazon Representatives offered in response to a deposition notice to Amazon pursuant to Section 2025.230 of the California Code of Civil Procedure, Amazon shall identify the designated topics for which it proposes offering coordinated testimony at the time Amazon serves its responses and objections to such deposition notice. Thereafter, the Parties agree to meet and confer in good faith concerning the coordination of such deposition, including the scope of testimony and appropriate time limits for said deposition. If Amazon fails to provide timely notice as contemplated under this Paragraph, The People may elect to proceed with the deposition on the topics as noticed, or to meet and confer concerning coordination, in their sole discretion. For the avoidance of doubt, nothing in this Paragraph shall affect Amazon's right to object to any deposition notice issued by The People pursuant to Section 2025.230 on any grounds.

IV. DEPOSITIONS OF AMAZON AND AMAZON WITNESSES FIRST NOTICED IN THE OTHER PENDING ACTIONS.

22. In the event Amazon receives a notice or subpoena for the deposition of Amazon or an Amazon Witness in any Other Pending Actions, Counsel for Amazon shall notify The People of such notice or subpoena and provide The People a copy thereof within seven (7) calendar days of receiving such deposition notice, and at least fifty-three (53) calendar days before the date on which the deposition is noticed. For the avoidance of doubt, notice fails to comply with this Paragraph if it is not provided at

1 least fifty-three (53) calendar days before the date on which the deposition is first noticed unless Amazon
2 is served with the deposition notice less than sixty (60) calendar days before the date on which the
3 deposition is first noticed, in which case, notice to The People fails to comply with this Paragraph if
4 Amazon does not provide such notice within three (3) business days after timely service upon Amazon in
5 such Other Pending Actions and at least thirty (30) calendar days before the date on which the deposition
6 is first noticed.

7 23. Upon receipt of a notice from Amazon for the deposition of an Amazon Witness, The
8 People shall have fourteen (14) calendar days to notify Counsel for Amazon in writing whether The People
9 also intend to notice such Amazon Witness for deposition in the present Action such that the deposition
10 will be a Coordinated Deposition, and whether The People are able to proceed with such deposition as
11 noticed in the Other Pending Action. For avoidance of doubt, the timing provisions for issuing a
12 deposition notice under Paragraph 13 shall not apply in such circumstances.

13 24. To the extent The People elect to proceed with a Coordinated Deposition but are
14 unavailable to proceed with the deposition on the date noticed in an Other Pending Action, or to the extent
15 The People require reasonable additional time to prepare, the Parties will use best efforts to coordinate
16 with each other and the appropriate Other Plaintiffs' Attorneys in the Other Pending Actions to identify
17 mutually-agreeable dates for the coordinated deposition taking into consideration the status of discovery
18 and operative case schedules in this Action and the relevant Other Pending Actions.

19 25. The People in their sole discretion may elect to participate in a Coordinated Deposition
20 whether or not Amazon provides notice in compliance with Paragraph 22. To the extent The People elect
21 to participate in the Coordinated Deposition of an Amazon Witness first noticed in any Other Pending
22 Action, the Coordinated Deposition will be subject to the deposition time limits set forth above in
23 Paragraphs 18 and 19.

24 26. To the extent The People decline to participate in the Coordinated Deposition of an
25 Amazon Witness first noticed in any Other Pending Action which occurs on a date more than sixty (60)
26 calendar days after Amazon provides written confirmation that it has substantially completed its document
27 production in response to The People's requests for production of documents through and including
28 Set Six, and for which Amazon has provided notice to The People in accordance with Paragraph 19, The

1 People may not seek the deposition of that same Amazon Witness in this Action without Amazon's
2 consent or leave of the Court. For the avoidance of doubt, the limitations of this Paragraph shall have no
3 effect, and The People shall be free to notice and take any deposition of an Amazon Witness, where
4 Amazon fails to provide notice that complies with Paragraph 22 and The People decline to participate in
5 a Coordinated Deposition of that Amazon Witness. For the further avoidance of doubt, nothing in this
6 Paragraph, or otherwise in the Coordination Order, bars The People from seeking agreement from Amazon
7 or leave of Court to take additional testimony from any Amazon Witness based on documents produced
8 by Amazon after the date Amazon represents it has substantially completed its document production.

9 27. In the event Amazon seeks to coordinate testimony from one or more Amazon
10 Representatives offered in response to a deposition notice to Amazon in its corporate capacity issued in
11 any Other Pending Action, Amazon shall identify the designated topics for which it proposes offering
12 coordinated testimony at the time Amazon serves its responses and objections to such deposition notice.
13 Amazon shall provide a copy of any such deposition notice, and any responses and objections thereto,
14 contemporaneously with the service of Amazon's responses and objections. Thereafter, the Parties agree
15 to meet and confer in good faith concerning the coordination of such deposition, including the scope of
16 testimony for any coordinated proceeding, the participants, and any appropriate time limits for said
17 deposition. If Amazon fails to provide timely notice as contemplated under this Paragraph, The People
18 may elect to meet and confer concerning coordination in their sole discretion.

19 **V. NON-PARTY WITNESS DEPOSITION COORDINATION**

20 28. In the event Amazon receives a notice or subpoena for the deposition of a Non-Party in
21 any Other Pending Actions, Counsel for Amazon shall notify The People of such notice or subpoena and
22 provide The People a copy thereof within seven (7) calendar days of receipt. Thereafter, should either
23 Party seek to depose such Non-Party in a Coordinated Deposition in this Action, the Parties agree to meet
24 and confer to facilitate such coordination to the fullest extent reasonably practicable.

25 29. The Parties agree that a Party seeking the deposition of a Non-Party witness will issue and
26 send to the other Party a deposition notice with a proposed date for the deposition, which absent mutual
27 agreement or leave of Court for good cause, shall not be set for a date any earlier than sixty (60) calendar
28 days from the date the Party serves the deposition notice. For the avoidance of doubt, under this
29

Paragraph, a Party may serve a deposition notice without first obtaining or issuing a subpoena to compel attendance of the Non-Party witness at the deposition.

30. The Party receiving the deposition notice shall, within fourteen (14) calendar days, advise the Party seeking the deposition as to whether it intends to cross notice the deposition and either (i) confirm the proposed date, or (ii) use best efforts to propose reasonable alternative dates within fourteen (14) calendar days of the originally noticed date.

31. If the Party receiving the deposition notice wishes to seek documents to prepare for or participate in the deposition of the Non-Party, the Party receiving the deposition notice shall also, within fourteen (14) calendar days, either (i) serve any subpoena for production of such documents on the Non-Party; or (ii) in the event a subpoena must be domesticated for service in a foreign jurisdiction, provide notice of a forthcoming subpoena to the original noticing Party and the Non-Party, including a copy of said subpoena, and use best efforts to promptly domesticate and serve such subpoena. The Party serving such a document subpoena on a Non-Party shall use its best efforts to enforce the subpoena, so as not unreasonably delay the taking of the Non-Party deposition noticed by the other Party.

32. If the Party receiving the deposition notice fails to comply with the timing requirements set forth in the preceding Paragraph 28, it shall waive all rights to move to continue or reopen the deposition of the Non-Party, or seek any other relief, based on production of responsive documents after the deposition.

33. Notwithstanding any agreed date and to minimize, to the extent possible, the burden on and inconvenience to Non-Parties, the Parties further agree to work in good faith to make any mutually agreeable modifications to the date(s) for each deposition, including to coordinate, to the extent reasonably possible, with the Other Plaintiffs' Attorneys for their respective depositions of the same Non-Party in the Other Pending Actions and to account for the availability of the Non-Party, the availability of counsel for the Parties and Non-Parties, any burden and inconvenience to the Non-Party, and the needs of the Parties to seek documents from each other or the Non-Party and/or its affiliated entities in advance of the deposition if a subpoena for production of documents is timely served or noticed pursuant to Paragraph 28.

34. Notwithstanding anything in this Coordination Order, the Parties shall retain all rights to depose any Non-Party witness by providing the notice required by statute if the sixty (60) day notice

1 period contemplated herein would require the deposition of a Non-Party witness to take place after the
2 close of fact discovery in this Action. If the Non-Party witness is not reasonably available on the date
3 noticed, the noticing Party shall promptly notify all Parties, and the Parties shall meet and confer within
4 five (5) calendar days thereof regarding a reasonable and appropriate date, time, and location for the
5 noticed deposition, which may be conducted after the close of fact discovery in the event the Non-Party
6 witness cannot reasonably be made available on an earlier agreed-date.

7 35. Notwithstanding anything in this Coordination Order, apart from the failure to timely serve
8 or notice a subpoena for production of documents as outlined in Paragraph 28, the Parties retain all rights
9 to formally object (by motion or otherwise) to the taking of any Non-Party's deposition or to the timing
10 or scope of any such deposition in this Action. For the avoidance of doubt, provided a Party complies
11 with the timing requirements set forth in Paragraph 28 regarding service or providing notice of a subpoena
12 for documents, the Party retains all rights to formally object (by motion or otherwise) to the taking of any
13 Non-Party's deposition or to the timing or scope of any such deposition in this Action.

14 36. This Coordination Order does not impose, modify, or waive any discovery obligation,
15 objection, or applicable privilege the Parties may have with respect to the production of documents relating
16 to any Non-Parties except as expressly provided herein. The Parties do not waive any objections to and
17 shall retain all rights to formally object (by motion or otherwise) to any Non-Party discovery in the Action
18 except as expressly provided herein.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

DATED: April 17, 2024

Respectfully Submitted,

By: /s/ Stephen R. Smerek
Stephen R. Smerek

By: /s/ Jeffrey M. Davidson
Jeffrey M. Davidson

Rob Bonta (SBN 202668)
Attorney General of California
Paula Blizzard (SBN 207920)
Senior Assistant Attorney General
Natalie S. Manzo (SBN 155655)
Jamie L. Miller (SBN 271452)
Supervising Deputy Attorneys General
Robert B. McNary (SBN 253745)
Stephen R. Smerek (SBN 208343)
Lauren J. Pomeroy (SBN 291604)
Carolyn D. Jeffries (SBN 319595)
Nell G. Moley (SBN 295498)
Komal Patel (SBN 342765)
Deputy Attorneys General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Tel: (213) 269-6058

*Attorneys for Plaintiff and Cross-Defendant,
The People of the State of California*

Heidi K. Hubbard (*pro hac vice*)
Kevin M. Hodges (*pro hac vice*)
Jonathan B. Pitt (*pro hac vice*)
Carl R. Metz (*pro hac vice*)
Carol J. Pruski (Bar No. 275953)
WILLIAMS & CONNOLLY LLP
680 Maine Ave. SW
Washington, DC 20024
Tel.: (202) 434-5000
Fax: (202) 434-5029

Jeffrey M. Davidson (Bar No. 248620)
Cortlin H. Lannin (Bar No. 266488)
Neema T. Sahni (Bar No. 274240)
COVINGTON & BURLING, LLP
415 Mission Street, Suite 5400
San Francisco, CA 94105
Tel: (415) 591-6000
Fax: (415) 591-6091
*Attorneys for Defendant and Cross-Claimant,
Amazon.com, Inc.*


[PROPOSED] ORDER

Pursuant to the above stipulation, IT IS SO ORDERED

DATED: Apr. 17, 2024


Hon. Ethan P. Schulman
Judge of the Superior Court

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, Felicia Green, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On April 17, 2024, I electronically served STIPULATED COORDINATION PROTOCOL AND ORDER via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **APR 17 2024**

Brandon E. Riley, Court Executive Officer


By: 
Felicia Green, Deputy Clerk

EXHIBIT E

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
)
Plaintiff,)
)
vs.) Case No.
) CGC-22-601826
AMAZON.COM, INC.,)
)
Defendant.)
-----)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
CASE MANAGEMENT CONFERENCE
DEPARTMENT 304

HEARD BEFORE JUDGE ETHAN P. SCHULMAN

Tuesday, April 16, 2024
San Francisco, California

Stenographically Reported By:
Hanna Kim, CLR, CSR No. 13083
Job No. 6614754

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
)
Plaintiff,)
)
vs.) Case No.
) CGC-22-601826
AMAZON.COM, INC.,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS, CASE
MANAGEMENT CONFERENCE, heard before His Honor, Judge
Ethan P. Schulman, on Tuesday, April 16, 2024, in
Department 304, 400 McAllister Street,
San Francisco, California, before Hanna Kim, CLR,
Certified Shorthand Reporter, No. 13083.

APPEARANCES OF COUNSEL:

For Plaintiff, The People of the State of
California:

DEPARTMENT OF JUSTICE

BY: STEPHEN R. SMEREK, ESQ.

BY: LAUREN POMEROY, ESQ.

300 S. Spring Street

Los Angeles, California 90013

213.269.6409

stephen.smerek@doj.ca.gov

For Defendant Amazon.com, Inc.:

WILLIAMS & CONNOLLY LLP

BY: KEVIN HODGES, ESQ.

BY: CARL R. METZ, ESQ.

BY: ANDREW LEMENS, ESQ.

680 Maine Avenue, SW

Washington, DC 20024

202.434.5899

khodges@wc.com

cmetz@wc.com

alemens@wc.com

1 APPEARANCES OF COUNSEL: (CONTINUED)

2
3 For Defendant Amazon.com, Inc.:

4 COVINGTON & BURLING LLP

5 SALESFORCE TOWER

6 415 Mission Street

7 San Francisco, California 94105

8 415.591.7021

9 jdavidson@cov.com

10
11
12 Also Present:

13 FELICIA GREEN, Clerk of the Court

REPORTER'S TRANSCRIPT OF PROCEEDINGS

CASE MANAGEMENT CONFERENCE

San Francisco, California

Tuesday, April 16, 2024

1:30 p.m., Pacific Daylight Time

--o0o--

THE COURT: Good afternoon.

Have a seat.

MR. SMEREK: Good afternoon.

MR. HODGES: Good afternoon, Your Honor.

THE COURT: All right. People versus
Amazon.

May I have principal appearances.

MR. SMEREK: Your Honor, Stephen Smerek
from the Department of Justice.

With me today are Lauren Pomeroy and Nell
Mally [phonetic], also Deputy Attorneys General.

THE COURT: Good afternoon.

MR. HODGES: Good afternoon, Your Honor.
Kevin Hodges from Williams & Connolly on behalf of
Amazon.

With me today are Carl Metz, Jeff
Davidson, and Andrew Lemens.

THE COURT: All right.

Good afternoon, everybody. I've reviewed

1 your joint case management statement, including the
2 appended draft stipulated coordination protocol, and
3 I've also reviewed the revised Appendix A that Mr.
4 Smerek provided me with by e-mail, I think it was
5 yesterday, but perhaps it was Friday.

6 I think that there are really only two
7 issues to address today, although, as always, I'm
8 open to discussing anything else that you think is
9 important.

10 The first is the overall case schedule.
11 And the second is the one remaining contested issue
12 in the coordination pro- -- protocol, which relates
13 to limits on -- on time limits on depositions.

14 If there are other issues, as always,
15 I'm -- I'm happy to hear from the parties. And if
16 I've missed something, I am sure you will let me
17 know.

18 With respect to the -- well, and -- and --
19 and let me say, by way of introduction to both of
20 these issues, that what we are going to do today,
21 we'll have a discussion about both of them. And I
22 will then issue final orders on both of them because
23 I think the parties need the certainty provided by
24 the overall case schedule and by any coordination
25 protocol.

1 And rather than continue to meet and
2 confer about this and continue to have case
3 management conferences on it, I think -- I think we
4 need to get to somewhere.

5 That somewhere may not be a place that one
6 party or the other is entirely happy with, but I
7 think the good news about both of these is, they do
8 provide enough certainty for the parties to engage
9 in advanced planning, particularly, as I'm thinking
10 about the case schedule.

11 And the time frame that we're talking
12 about, at least from this vantage point, seems far
13 enough away that we ought to be able to make this
14 work.

15 I'll -- I'll just add one more kind of
16 time honored epigram to all of this, which is at
17 some point, from a judicial standpoint, what the
18 parties need is a ruling. Whether it's a good
19 ruling or a bad ruling, they need some certainty.
20 And that's -- that's what I hope to provide.

21 I do hope to provide it in a reasonable
22 way and with your input, but I do think you need
23 those rulings.

24 So let's turn to the case schedule first.

25 The -- the revised Appendix A that

1 Mr. Smerek provided me with, I take it, summarizes
2 the parties' most recent positions as to the
3 proposed deadlines that you all have been able to
4 arrive at.

5 Is that right?

6 MR. SMEREK: That is correct, Your Honor.

7 MR. HODGES: That's correct.

8 THE COURT: Okay.

9 And from a big picture, obviously what's
10 driving this is the need, as much as possible, to
11 coordinate what goes on in this litigation with the
12 FTC action and the dates set by Judge Chun in that
13 case.

14 So the parties have agreed, for example,
15 to the same deadlines that Judge Chun set -- again,
16 if I'm pronouncing his name correctly; I hope I
17 am --

18 MR. HODGES: That's correct.

19 THE COURT: -- with respect to the
20 deadline to serve written discovery requests to file
21 discovery motions and the close of fact discovery,
22 the latter on August 8th of 2025.

23 Where the parties -- well, and I'll add,
24 your discussions have led to a narrowing of your
25 differences later in the schedule where the parties

1 diverge is -- tends to be toward the end of the
2 schedule leading up to the trial date.

3 And, of course, the trial date that's been
4 set in here is approximately 60 days before the
5 trial date that's set in the Federal Court.

6 Our trial date is Oct- -- is, I'm sorry,
7 August 10, 2026. The FTC trial date, August -- boy,
8 I don't know what my problem is today -- October 13,
9 2026.

10 And as I look at, if you will, the end of
11 the schedule, that is, particularly looking at the
12 discovery, the expert discovery deadlines and then
13 the dispositive motion deadlines, Amazon's position
14 for the most part tracks exactly the dates that are
15 in place in the Federal Court and the FTC action.
16 The Attorney General is seeking somewhat earlier
17 dates, although the gaps have really narrowed pretty
18 considerably.

19 I am inclined to adopt The People's latest
20 proposal, but I want to explain why, and, of course,
21 I do want to hear from Amazon.

22 First, the -- with respect to dispositive
23 motions, the -- The People's position is that the
24 deadline to file dispositive motions should be
25 March 6, 2026.

1 Amazon suggested a date 30 days
2 thereafter, on April 6th, 2026, the same date that
3 Judge Chun said, and then basically the -- the
4 schedule on those motions differs by approximately
5 that 30 days.

6 The -- the concern -- the concerns that I
7 have with respect to Amazon's proposal are twofold:

8 Number 1 -- and this is a -- admittedly a
9 small point -- as I read Judge Chun's order, the --
10 if I can find it -- the dispositive motions would be
11 to use his language "noted," which I think we say
12 "notice" under State procedure, for hearing on
13 June 15, 2026, with the last day to file them being
14 April 6, 2026.

15 That would not accord with California
16 procedure, which, of course, requires at least
17 75 days' notice for a dispositive motion. If my
18 computer calendar is correct, that would afford only
19 seven-day -- 70 days' notice. So that wouldn't work
20 under California procedure.

21 More significantly, because we can agree
22 to disagree about five days -- or I suppose seven
23 days of when -- it's two days for electronic
24 service -- the schedule that Amazon's proposing here
25 would have the briefing completed on June 15, 2026,

1 which means that the Court would not be able to
2 actually hold a hearing on those motions until
3 presumably at least a week or so thereafter, so that
4 I would have an opportunity to read the reply brief
5 or briefs.

6 And by that point, we are really pushing
7 up very uncomfortably close to the August 10 trial
8 date, which I'm reluctant to do. I'm reluctant to
9 do that from my own selfish perspective in terms of
10 my own workload right before trial, but, more
11 significantly, more in terms of the parties'
12 positions.

13 We've already discussed this, I think,
14 before, that it would be preferable if there are
15 motions that could be brought what in Federal Court
16 would be called motions for partial summary judgment
17 and here we call motions for summary adjudication,
18 for example, of a given cause of action, if they
19 could be brought earlier in the case, not only from
20 the standpoint of judicial workload; but, again,
21 more importantly, so that the parties have some
22 certainty by the time we get to a trial date as to
23 which issues are going to go to trial and which
24 aren't.

25 But just leaving open the possibility that

1 I'm going to be deciding significant issues at the
2 last minute before trial is not an attractive
3 prospect.

4 So that's a concern that I have, and
5 that's why I'm kind of, as I say, leaning
6 tentatively toward adopting The People's so-called
7 compromised proposal that's set forth in this
8 revised Appendix A.

9 With respect to the -- the somewhat
10 earlier deadlines with respect to expert discovery,
11 you know, I -- I'm -- I'm a little less -- I'm a
12 little more agnostic, I guess is the way I can put
13 it. The Code, of course, in California does not
14 require fact discovery to be closed before expert
15 discovery commences. But the -- the -- again, the
16 differences there seem relatively minor.

17 They're 30 to 45 to 60 days at most, so
18 I'm not sure those really make a huge difference.
19 But, anyway.

20 So that -- that's where I think I'm coming
21 out on all of this. And I don't want us to be
22 jammed right before the trial date. And, therefore,
23 I would prefer the -- the slightly earlier schedule
24 that The People have proposed.

25 Let me put aside for one moment the

1 \$64 million question here, which is, whether there's
2 even going to be a trial in both cases on the dates
3 that both judges have -- have already set; whether
4 those trial dates will hold and how one case may
5 affect the other. That's -- those are imponderables
6 that I don't think any of us is in a position to
7 predict at this point.

8 That they are imponderables, however,
9 leads me to think that some of the fine distinctions
10 that the parties are trying to draw here may end up
11 becoming academic in any event.

12 But be that as it may, I think we have to
13 go on the assumption that both cases will move on
14 the schedules that were set.

15 So I -- I'm sorry for talking at such
16 length.

17 Mr. Hodges, did you want to address my
18 tentative inclination here to adopt The People's
19 proposal?

20 MR. HODGES: I do. Thank you, Your Honor.

21 And I want to say I think the parties have
22 made a good deal of progress --

23 THE COURT: Yes.

24 MR. SMEREK: -- on this. We -- we have
25 talked to the FTC, and I think we generally agree,

1 and we agree on what the new fact discovery deadline
2 should be. It's aligned with the FTC. We agree
3 generally with the -- with the sequencing of expert
4 reports. It's just the particular dates.

5 THE COURT REPORTER: Excuse me, Your
6 Honor. I'm sorry, Your Honor.

7 THE COURT: Yes.

8 THE COURT REPORTER: Could counsel speak
9 into the microphone, please?

10 THE COURT: So, unfortunately, Mr. Hodges,
11 we need to do something about this.

12 That mic is a dead mic. If you could take
13 the mic from your counsel table --

14 MR. HODGES: I will do that.

15 THE COURT: -- and bring it to the podium,
16 I would appreciate it.

17 MR. HODGES: I can certainly do that.

18 THE COURT: We have raised this with court
19 staff, and it's...

20 MR. HODGES: Is this better?

21 (Discussion off the record, with an audio
22 test, 1:47 p.m.)

23 MR. HODGES: So -- so with respect to the
24 schedule, what -- let -- let me start backwards
25 with -- with the expert issues.

1 What -- what we have tried to do is to
2 align our schedule with the schedule in the FTC
3 case, and we think --

4 THE COURT: Right.

5 MR. HODGES: -- that there are very good
6 reasons to do that.

7 One is that we don't think it makes sense
8 to identify experts and subjects for experts two
9 months or one month before the close of discovery
10 because we expect that what is going to happen is
11 that there will be a lot of depositions that are
12 taken during that time period.

13 And while hopefully we'll have a lot of
14 expert work done in advance, final decisions about
15 who we will need, what they will need to speak to,
16 will be heavily influenced by the discovery that
17 happens at the very end of the fact discovery
18 period.

19 THE COURT: Really?

20 MR. HODGES: Yes.

21 THE COURT: I ask skeptically, don't you
22 all really know after a -- a lengthy pre-filing
23 investigation and an extensive complaint what the
24 issues are and what experts are going to be asked to
25 address?

1 MR. HODGES: This will be an expert
2 intensive case.

3 THE COURT: No question about it.

4 MR. HODGES: And -- and I think that the
5 expert opinions will be very detailed and probably
6 very comprehensive. And a lot of that will be built
7 on what the testimony is that comes in during the
8 case.

9 My experience is, particularly in a case
10 where you have multiple parties coordinating
11 depositions, that a lot of depositions tend to move
12 to the very end of the period. And so I -- I think
13 we're going to get not only a lot of depositions at
14 the end, but a lot of days of testimony that will
15 need to be processed, and it will -- it will
16 influence our lineup of experts and what they will
17 testify to.

18 And the -- the -- the prehearing
19 investigation was, you know, obviously by the
20 Attorney General's office, not by us. So while we
21 know what our witnesses said, we don't know the
22 entirety of that record.

23 There -- there's no reason why expert
24 disclosures need to be made before the close of fact
25 discovery. That -- that's not the case in the

1 current schedule. It doesn't really have
2 significant benefit. It -- the -- the -- the AG's
3 schedule does make dispositive motions about two
4 weeks earlier, but I submit that that problem is not
5 solved by anyone's schedule right now.

6 You know, we were here last time, and --
7 and you expressed concerns about the length that
8 would be needed to dis- -- to resolve summary
9 judgment motions and to process them and to make use
10 of them at trial. I -- I think all of these time
11 periods are short.

12 And I don't think that moving expert
13 discovery into the fact discovery period really
14 solves the problem. So I -- I don't think there's
15 much benefit.

16 THE COURT: Well, but, I mean, really,
17 if -- if I may interrupt, it's not really a question
18 of moving it into the fact discovery period.

19 The parties agreed that fact discovery
20 will close August 8th of 2025; right?

21 MR. HODGES: That's correct.

22 THE COURT: And the opening reports, the
23 competing deadlines here are the -- the date that
24 The People is proposing is August 29th, roughly
25 three weeks later, and you all are proposing October

1 3rd of 2025.

2 So it's not a huge difference; but, in any
3 event, it is following the close of fact discovery
4 in each case.

5 MR. HODGES: Well -- well, the -- the
6 initial disclosures are not. The initial
7 disclosures of expert information are made in July
8 of 2025.

9 THE COURT: Right, but that's just --
10 presumably that's the identity of the experts and
11 their CVs and --

12 MR. HODGES: And subject matters.

13 THE COURT: -- a brief substance -- you
14 know, a brief summary of the -- of their testimony,
15 which I shouldn't say this, but is often quite
16 uninformative.

17 MR. HODGES: Although it does -- it does
18 require substantive decisions about which experts --

19 THE COURT: Sure.

20 MR. HODGES: -- will cover which topics.

21 THE COURT: Sure.

22 MR. HODGES: But -- but there are other
23 reasons why lining up the FTC and the schedule in
24 this case makes sense. I mean, these are
25 overlapping cases. There will be coordinated

1 discovery. We will be issuing expert reports that
2 will largely overlap.

3 It doesn't make much sense to have expert
4 reports staggered a couple weeks apart so that an
5 expert issues a report and then issues a -- a
6 similar report a couple weeks later.

7 We -- you know, we will have experts that
8 have other commitments and requiring them to have
9 these kind of staggered every couple weeks deadlines
10 is -- is burdensome for them, and it doesn't really
11 add any value. And we -- we are going to be issuing
12 similar reports in all the cases, and we have -- we
13 have lined up the fact discovery deadlines in the
14 two cases. It would make sense to line up the
15 expert discovery deadlines in the same way.

16 THE COURT: All right. Well, let me ask
17 you a question, and I'll Mr. Smerek the same
18 question.

19 MR. HODGES: Uh-huh.

20 THE COURT: If I'm convinced by you on
21 this issue, that is, as to the expert -- the timing
22 of the expert reports, you have not yet addressed my
23 concerns about dispositive motions.

24 But what if I were to split the baby, as
25 it were, and adopt Amazon's proposal with respect to

1 the expert deadlines and The People's proposal with
2 respect to the dispositive motions, how would that
3 work?

4 You've got expert discovery closing in
5 that situation February 23, 2026, and a deadline to
6 file any motions -- dispositive motions on
7 March 6th, which is really just, what, two weeks
8 later.

9 MR. HODGES: It's very quick. It's very
10 quick.

11 THE COURT: That's -- I mean, that's a
12 concern.

13 MR. HODGES: I understand. No, I -- I
14 understand.

15 But if we -- the -- the problem is, we're
16 going to have two overlapping but different sets of
17 deadlines for --

18 THE COURT: But that's --

19 MR. HODGES: -- probably the same experts.

20 THE COURT: Right.

21 But that -- that -- that tension flows
22 from the fact that you have two parallel cases here
23 with two different trial dates.

24 MR. HODGES: I -- I understood that.

25 THE COURT: And by the way, to add to

1 my -- I'm sorry to go off on a tangent, but to add
2 to my sort of laundry list of the other
3 imponderables, there's another interesting issue,
4 which is, how long are these trials going to take?

5 I dare say that if I asked both sides that
6 question right now, you would look at me blankly and
7 say, "I have no idea. We're going to have to really
8 get into discovery to figure that out."

9 So, you know, it's -- it's another
10 interesting question whether -- if there's, in fact,
11 a trial that begins here on August 10th of 2026,
12 whether it's going to be over by the time the FTC
13 trial is scheduled to commence on October 13 of the
14 same year.

15 MR. HODGES: Understood.

16 And that's -- and that's difficult to
17 predict.

18 We've also taken to heart your suggestion
19 that we file early dispositive motions, partial
20 dispositive motions, and we hope to be able to do
21 that. And we hope that that will have an influence
22 on what the expert discovery will look like. And so
23 we'd like for there to be enough time in the
24 schedule that we could actually make use of any
25 rulings that the Court issues on those --

1 THE COURT: All right.

2 Well, then, let me -- let me ask you a
3 slight variance on the question that I just asked
4 you.

5 Should I split the baby by adopting
6 Amazon's position with respect to the expert
7 disclosure deadlines, but The People's position on
8 the dispositive motions? Would you be comfortable
9 with that as an outcome?

10 MR. HODGES: Yes, I think we would.

11 THE COURT: Okay. All right.

12 MR. HODGES: Just -- just one other -- one
13 other point, Your Honor.

14 THE COURT: Yeah.

15 MR. HODGES: You mentioned the noting date
16 in the FTC action. The -- the noting date is the
17 date that's selected that determines the briefing
18 schedule un- -- under the local rules --

19 THE COURT: Okay.

20 MR. HODGES: -- of the Western District of
21 Washington. It's not the date of argument.

22 THE COURT: Okay.

23 MR. HODGES: It -- it could be, but it --
24 it doesn't determine the date of argument.

25 THE COURT: Okay. All right.

1 I wasn't sure quite what it meant, but I
2 didn't have the time or, frankly, interest to read
3 the local rules of the Western District of
4 Washington.

5 MR. HODGES: Thank you, Your Honor.

6 THE COURT: All right. Thank you.

7 Mr. Smerek, let me -- let me ask you to
8 start where I left off with Mr. Hodges.

9 What if I split the baby here and adopted
10 expert disclosure deadlines that your friends have
11 suggested and the dispositive motion deadlines that
12 The People have suggested, would you be amenable to
13 that, if not, thrilled by it?

14 MR. SMEREK: So, Your Honor, I guess
15 answering in reverse order, I -- I can say that I
16 wouldn't necessarily be thrilled by that, but I -- I
17 do think that that would be an option with one
18 caveat.

19 THE COURT: All right.

20 MR. SMEREK: And -- and that caveat would
21 revolve around the -- the dates for the exchange,
22 as -- as Your Honor noted, of the identities of the
23 experts.

24 THE COURT: Okay.

25 MR. SMEREK: And what I would say kind of

1 stepping back is, Your Honor's comments at the start
2 as to why you were tentatively favoring our proposal
3 were exactly the reasons that we offered it as a
4 compromise in the first place.

5 And so, we worked from the comments that
6 Your Honor had made at the last case management
7 conference; first, that you were skeptical about
8 having a close of fact discovery earlier. We had
9 initially proposed April, four months earlier, with
10 the ability to coordinate depositions after that.
11 And you showed some skepticism with respect to how
12 that would actually be accomplished and how that
13 would impact expert discovery.

14 And then the other comment you made at the
15 last CMC was that you would like to have more time
16 with the briefing and the comments that you repeated
17 today.

18 THE COURT: Right.

19 MR. SMEREK: And so this proposal and --
20 and, in particular, our -- our last compromise was
21 directed with that in mind.

22 I think the starting point to recognize
23 here is, we did agree that coordination -- we do
24 agree that coordination would be a positive thing.
25 And we did volunteer request, if Your Honor might

1 remember, to continue our fact discovery period for
2 six months to provide an opportunity that there
3 could actually be some meaningful coordination of
4 Amazon depositions.

5 At -- at the same time we made that, we
6 also understood we're -- we're having difficulty
7 getting documents, which we've started to get
8 documents through the litigation; and so, that
9 additional time was also separately necessary.

10 We did not seek to align the schedules at
11 first because we recognize the difficulties, the
12 imponderables that Your Honor mentioned, with
13 respect to what -- what that meant for -- on the
14 back end for the -- the expert and summary judgment
15 motion and trial dates.

16 And recognizing that we filed our case a
17 full year earlier than the FTC action, when we met
18 and conferred, we agreed for Amazon to -- to exceed
19 to Amazon's request for coordination purposes so
20 that their likely more senior people, who will be
21 deposed at the end of the fact period, would not be
22 subject to multiple depositions in different cases.
23 We agreed to extend fact discovery through
24 August 8th, so a full ten-month discovery period.

25 So we've -- we've already agreed to an

1 extension for the benefit of Amazon for the
2 coordination of those depositions, which now,
3 because they're exactly aligned, any overlapping
4 deposition is -- now potentially will be coordinated
5 with orders entered in both cases.

6 With that in mind, we did not want to
7 disrupt at least what is currently our trial
8 schedule on the assumption, as Your Honor put out,
9 we cannot predict the future, but we can assume that
10 the dates will hold and we have to plan and
11 prosecute the case accordingly.

12 And so with that in mind and recognizing
13 the concerns that Amazon had raised about
14 overlapping expert discovery, we agreed to push out
15 the opening expert reports where the opinions will
16 be disclosed until, as Your Honor noted, not only
17 after the close of fact discovery, but three weeks
18 after.

19 But importantly there, we think there is
20 no reason that the parties cannot identify the
21 experts that they intend to have -- to have
22 providing reports. And indeed the -- the real issue
23 there, as we see it, as Amazon represented at the
24 last conference, they are likely to have as -- as
25 many as ten or more experts, experts that we might

1 not at this point even necessarily imagine that they
2 would have. And we will need to retain,
3 potentially, experts for rebuttal reports for
4 opinions that they have.

5 And so, we think it is a risk to the
6 current schedule if those experts -- if we don't at
7 least know who the experts are who will be
8 presenting opinions so that both parties can know
9 that they have the experts lined up to be giving the
10 reports thereafter.

11 THE COURT: All right.

12 So if I may interrupt you at this point,
13 the substance in here may imply yet another
14 compromise, which is that the Court keep the earlier
15 disclosure deadlines, i.e., July 7 and August 7,
16 2025, for the identities of witnesses, but perhaps,
17 and to your dismay, perhaps keep the -- the report
18 deadlines in line with those set in the Federal
19 Court.

20 MR. SMEREK: Your Honor, and -- I -- I
21 think you went exactly where -- where I was going,
22 and that was my caveat. And that is, I don't think
23 we would have an issue with the current report dates
24 and the close of expert discovery if it is that the
25 initial disclosures remained as we have proposed.

1 And act- -- actually what I would say to
2 Your Honor is, and then if the dates for summary
3 judgment -- for the filing of summary judgment
4 motions and the briefing remained as we have
5 proposed, we would agree with that schedule.

6 And -- and just to be clear, the -- the
7 real difference in our schedule we saw as that
8 starting of the -- the first opening expert reports
9 and most of the time periods that the parties agreed
10 to thereafter were either identical or very close.

11 We had proposed to Amazon early in the
12 negotiations, before the original pretrial schedule,
13 a shorter period of time between the close of expert
14 discovery and dispositive motions, and they pushed
15 back. And I think the original schedule had maybe
16 two or three months for them to file opening
17 reports.

18 Given the direction from Your Honor and
19 what we heard today about the hope to have earlier
20 dispositive motions, we absolutely think that
21 Your Honor could adopt a schedule exactly if you --
22 as you have proposed now, which keeps our initial
23 disclosure dates, Amazon's expert report dates, and
24 then our proposed dates for dispositive motions.

25 THE COURT: All right.

1 So just to be clear, because this is what
2 I'm coming up with and it's a mess, I'm -- I'm
3 holding up my copy of the revised appendix with a
4 lot of scribbling on it.

5 The suggestion is, then, that the July 7
6 and August 7, 2025, deadlines for exchange of
7 information would be adopted by the Court.
8 Thereafter, in the next four rows, the Amazon
9 deadlines for expert reports would be adopted, i.e.,
10 October 3, 2025; December 1, 2025; January 26, 2026;
11 and February 23, 2026.

12 And thereafter, then the dispositive
13 motion deadlines would be those proposed by The
14 People beginning on March 6 of 2026 and going
15 through April 17 and May 15.

16 MR. SMEREK: Thank you, Your Honor.

17 THE COURT: What do you think, Mr. Hodges?

18 MR. HODGES: I -- I -- I think --

19 THE COURT: I feel like I'm presiding over
20 a mediation here, but maybe we're getting closer to
21 something that everybody can live with.

22 MR. HODGES: Yeah, a mediation or an
23 auction, Your Honor.

24 THE COURT: Exactly.

25 MR. HODGES: I -- I -- I find it hard to

1 object too strenuously, but I -- I do think
2 that's -- identifying experts and subjects before
3 the close of discovery is going to lead to
4 supplemental disclosures after discovery is -- is
5 over. So I'm -- I'm not sure, you know, how much
6 merit there is to -- to doing it this way.

7 I also find it hard to believe that either
8 party will have to go out and retain experts after
9 seeing disclosures in a case of this nature. So
10 I -- I -- I don't think those concerns are really
11 big motivators here.

12 THE COURT: Okay.

13 MR. HODGES: But I -- I -- I don't object
14 to that approach.

15 THE COURT: All right.

16 Well, that will be the approach that's
17 adopted.

18 And let me add one more final modest
19 proposed amendment here, which is in the third --
20 no.

21 In the fourth row of revised Appendix A,
22 you have competing proposals for the deadline for
23 the parties to issue their demand.

24 It seems to me that, in effect, by
25 ordering the date for disclosure, the demand is, in

1 effect, deemed to have been made. And I don't think
2 you need a box for that.

3 MR. SMEREK: We can agree with that,
4 Your Honor.

5 MR. HODGES: We -- we agree.

6 THE COURT: Okay. All right.

7 So with some difficulty and with the hope
8 that I don't mess this up when I adopt it, that will
9 be the case schedule.

10 The first three are -- are agreed upon.
11 We're omitting the fourth, which we just mentioned.
12 And then we've got the other deadlines that -- that
13 we've discussed. Okay.

14 Coordination protocol.

15 The parties disagree on one topic, which
16 is contained in competing versions of Paragraph 17
17 of the coordination protocol relating to deposition
18 time limits. And you've argued at some length on
19 both sides about your competing versions of that.

20 I guess I want to ask a couple of
21 questions, and then I actually have my own idea on
22 where this ought to come out. But I don't want
23 that -- unlike on the case schedule, I don't want to
24 tip my hand until I hear from you first.

25 So, you know, one of the issues relates --

1 and maybe we'll start with this issue, first.

2 One of those issues -- one of the issues
3 relates to the cases in which the parties are
4 agreeing that a coordinated deposition may be taken
5 for two days rather than one day. I'm
6 oversimplifying here, but you know which provision
7 I'm talking about. And so, this is subparagraph b,
8 as in "boy," of The People's proposed Paragraph 17
9 and subparagraph d, as in "dog," of Amazon's.

10 And essentially the thought is here that,
11 where there are going to be coordinated witness
12 depositions that is coordinated with other
13 Plaintiffs' counsel, whether it's the FTC or private
14 Plaintiffs' class-action lawyers in the other
15 coordinated actions, that there are going to be some
16 number of witnesses, who you all will agree in
17 advance, tend be deposed for two full days, provided
18 that certain conditions are met, rather than the
19 kind of default that you've agreed to, which is a --
20 a full day of -- a single full-day deposition.

21 And my question is a simple one.

22 The People's proposal is that those folks
23 would be limited to three -- I'm -- I'm sorry,
24 Amazon's proposal is that those -- those witnesses
25 would be limited to three. The People's proposal is

1 that there would be ten such witnesses.

2 And my question is, where do those numbers
3 come from? The -- I -- I -- what I want to
4 understand is, obviously, The People have had a
5 peek -- more than a peek into a number of Amazon's
6 witnesses by way of those witnesses from whom they
7 elicited testimony during your pre-file
8 investigation, but that presumably is not going to
9 be the entirety of the witnesses whom they will seek
10 to depose. And we'll talk about that issue
11 separately.

12 But my question is for both sides, and
13 maybe I'll start with Mr. Smerek first: Is the
14 reason that you proposed to that be ten because
15 there are ten identifiable individuals whom you
16 already have in mind who you think will require
17 these extraordinarily lengthy depositions by
18 comparisons of the default rule? Or is it more just
19 kind of in the abstract, trying to anticipate and
20 plan for, you know, the worst case depending on how
21 things go?

22 MR. SMEREK: Thank you, Your Honor.

23 So I -- I think the answer is a little bit
24 of both.

25 THE COURT: Okay.

1 MR. SMEREK: So first we'll start with,
2 as -- as we've set forth and as Your Honor's
3 recognized, the -- the complex case does not have
4 a -- a default time limit. And here we're talking
5 about depositions that are coordinated, as -- as
6 you've --

7 THE COURT: Right.

8 MR. SMEREK: -- indicated. And so we're
9 talking in some cases about three or four different
10 sets of Plaintiffs' counsel being involved in the
11 examination. And absolutely there are overlapping
12 issues, but there are many substantive
13 nonoverlapping issues.

14 So the first one is, we actually believe
15 that a default of 14 hours for all of the
16 depositions that we would take would be justifiable
17 where there is, at a minimum, three distinct cases
18 that are really being litigated in the subject
19 matter with third-party vendors, with who- -- excuse
20 me, third-party sellers who sell through the Amazon
21 platform, wholesale suppliers or vendors who sell,
22 and then fulfillment issues, which are not involved
23 in our case, but are a central part of the FTC
24 action. And then, as well, you have class
25 certification issues that are involved in the

1 various Plaintiffs' class actions.

2 So three substantive areas, at least a
3 procedural area for questioning. So we think that
4 even with the wit- -- ev- -- with witnesses who will
5 have overlap into multiple of those areas, 14 hours
6 in lieu of where we're coordinating the potential of
7 two, three, or even four separate depositions, if it
8 weren't coordinated, would not be unreasonable.

9 But here what we've said is, we have
10 looked at the information that we have. And we have
11 identified areas within Amazon, sometimes specific
12 individual witnesses or groups, areas within Amazon,
13 where we are still getting information that's still
14 being produced to us, who have responsibility that
15 covers multiple of those aspects such that we would
16 understand there are some witnesses who are, for
17 example, not likely to have information about the
18 wholesale or vendor relationships.

19 And so it's unlikely that we would need
20 perhaps a -- a full two days with people who don't
21 have information broader than only vendors and
22 suppliers or only fulfillment, which we might not
23 participate in at all unless they also had some
24 overlapping information.

25 And so we looked at the number of

1 custodians that we have. We looked at the number of
2 potential likely witnesses we had and the number of
3 them who have responsibilities that lie over
4 multiple different areas where there will be
5 examination.

6 And that led us to conclude that ten --
7 that we would be willing to agree to restrict,
8 right, what otherwise would be a right under the
9 Code by agreement down to ten.

10 I would note, as we pointed out in the
11 paper, in the joint statement, that the FTC has
12 proposed a similar structure. They -- they are
13 still waiting a response from Amazon on that
14 structure, but they've proposed a similar structure.
15 And they have suggested that, based on their view,
16 they need at least 20 of those depositions.

17 And as -- as part of the basis for that,
18 they -- they were not able or they -- they, like --
19 like us, have not identified specific individual
20 witnesses, but they did identify the experience in
21 the recent Google action in which the parties agreed
22 that there would be 16 de- -- or the parties didn't
23 agree. The -- the Court ordered that as many as 16
24 depositions could go forward in a coordinated
25 fashion between a state action pending in that same

1 court and a federal action, a -- an action by the
2 states and an action by the federal government.

3 And so, they looked at it and said six- --
4 the -- with the 16 there and given the complexities
5 in our case, given the multiple different
6 substantive areas, which wasn't an issue in the
7 Google case, that 20 was the number.

8 And so, what we've put forward is that we
9 are willing to limit, right, what would otherwise be
10 our right under the Code down to ten. And will we
11 take all ten at two days. And I do not know that we
12 will.

13 We have not -- we have not gotten all --
14 all of the documents yet. We're still processing
15 the discovery. It -- so it may be that we only use
16 eight or nine. It may be that we need all ten.

17 But here we've also included a provision
18 that if the FTC was -- a coordination order was
19 either agreed to by Amazon and the FTC or entered in
20 that case, that the number of depositions that we
21 would be subject to that two-day cutoff would align
22 with the FTC for the obvious reason that the
23 coordinated deposition would need to align.

24 THE COURT: Where does it say that?

25 MR. SMEREK: I believe it's the last line

1 of the paragraph, but let me pull it out. It is on
2 page 6, lines 2 to 4. If -- oh, excuse me, hold on.

3 THE COURT: Oh, I see, in Paragraph C --

4 MR. SMEREK: Yes.

5 THE COURT: -- "Should any order in the
6 other pending actions." [As read]

7 MR. SMEREK: Thank you.

8 THE COURT: All right.

9 MR. SMEREK: But -- so we have -- we have
10 put thought into this. We have identified some
11 witnesses that we think are likely to need 14 hours.
12 But also this will depend on our coordination with
13 the FTC and the other private Plaintiffs with
14 respect to how much time they believe they need for
15 witnesses for topics that are not at issue in our
16 case.

17 THE COURT: All right.

18 Let me -- let -- let me start hinting
19 where I'm going on this.

20 One of the other issues of the three that
21 are teed up here relates to a distinction between
22 witnesses who did testify in the pre-filing
23 investigation and those who didn't.

24 And Amazon points out quite rightly that
25 one can reasonably anticipate that the former

1 category, that is, folks whom you've already had an
2 opportunity to depose, that those depositions, you,
3 in effect, having a head start on them, if you will,
4 and presumably could be completed more quickly than
5 those of witnesses where you've never met the person
6 before and you're starting with their CV and where
7 they went to high school and whatever you all ask in
8 your introductory questions.

9 What if we were to take paragraph --
10 subparagraph b of your proposal, putting aside for
11 the moment how many folks are going to fall within
12 that category, whether it's three or ten or eight or
13 nine or some other number, and take Amazon's
14 carveout to say that that category will not include
15 witness- -- will not include witnesses who have
16 previously testified in a pre-filing investigation.

17 In other words, the folks who fall within
18 the -- the two-day category, The People can
19 coordinate to identify up to some total of those
20 folks, quote, "where the Amazon witness has not
21 previously testified in a pre-complaint
22 investigational hearing in this action or any of the
23 other pending actions." [As read]

24 That, it seems to me, is a reasonable
25 proposal, and it helps, I think, narrow the

1 differences between the parties here in terms of
2 where you come out.

3 MR. SMEREK: So, Your Honor, I -- I guess
4 I would start with that that is certainly a better
5 proposal than Amazon has made. I think it would --
6 it is certainly a better proposal than -- than
7 having a seven-hour limit apply so that the default,
8 this -- the ten-hour time limit would -- would apply
9 to those. And -- and so, for that reason, I think
10 it is -- as you've said, it's a move in a reasonable
11 position.

12 I -- I think I -- I would come back to two
13 things: The -- the first one is just the
14 recognition that part of what we're doing here is --
15 will dictate how fu- -- future investigations are --
16 are completed and what has to be understood in
17 future investigations.

18 So the -- the IH is the depositions taken
19 in this -- in this investigation had a limited focus
20 to learning facts that were necessary to make
21 decisions about what things to continue to
22 investigate, what things not to continue to
23 investigate, and what information needed to be
24 developed to make a determination as to whether it
25 was warranted to file a complaint.

1 Limitations around time periods, because
2 there was an IH, will raise the specter that in
3 future investigations we -- we need to be mindful
4 that our -- our rights to take litigation
5 depositions of witnesses might be limited sheerly
6 because we -- we did the investigation, which may
7 cause the investigation to go on longer or to take
8 longer with individuals because we will know that we
9 have limited time after litigation commences.

10 The -- so I -- I'm just --

11 THE COURT: In all candor, I'm not going
12 to lose much sleep over the, quote/unquote,
13 "precedent" that this order may set for your future
14 investigations. That's, I -- I mean, to say that
15 that's an imponderable -- it's an imponderable upon
16 an imponderable. I -- I can't worry about that.

17 I -- I -- I really have to worry about the
18 practical realities of this litigation and -- and,
19 you know, Amazon's legitimate concern here that it
20 not be unduly burdened by duplicative depositions
21 and that you all spend a reasonable amount of time
22 in conference rooms taking these depositions.

23 MR. SMEREK: And -- and that -- thank you,
24 Your Honor.

25 And that leads to the second point, which

1 is the -- the risk that that particular limitation
2 puts would be how it practically -- how it
3 practically relates to coordination that would be
4 ordered in the FTC or other private cases inasmuch
5 as if -- if those cases were permitted to have some
6 number of depositions go 14 hours and not be limited
7 in the way Your Honor has proposed, it would lead
8 to, as a practical reality, a -- a discrepancy or a
9 question with respect to how individual depositions
10 could or should be noticed, where, for example, the
11 FTC took an IH that we did not, the FTC noticed a
12 deposition under their coordination proposal, if it
13 did not have the same limitation, and whether our
14 time -- where -- whether our time would be limited
15 to -- or how our time would be limited as a
16 practical matter. If the FTC was allowed to take
17 seven hours, would we be allowed to take seven hours
18 or how would it interact.

19 So I think as a practical matter --

20 THE COURT: And -- and I'm sorry to
21 interrupt you. I'm getting a little lost in all of
22 this.

23 And it -- it may be -- I mean, what --
24 what I've done, frankly, in preparation for this
25 hearing was, I've drafted my own hybrid version, if

1 you will, of this Paragraph 17 in a way that made
2 sense to me.

3 I want to -- I want to hear you out, and
4 then I want to hear from Mr. Hodges.

5 But maybe what I want to do here, because
6 it just may be easier, is, having heard both sides,
7 I want to take a break -- so I'm just throwing this
8 out as an idea -- take a break, go back to my
9 computer, bang out some language that tries to
10 combine the two, because I'm -- I'm realizing that,
11 for example, I missed the language about the --
12 about what happens, if there's an order in one of --
13 in the FTC action that allows higher time limits,
14 and that's important.

15 And maybe come back -- it won't take me
16 long; I'm a pretty fast typist -- and come back and
17 hand out, which is what I propose to do, kind of a
18 combined proposal, if you will, that I would propose
19 to adopt, and then get your input on it.

20 That's kind of what I'm thinking might be
21 the most productive use of our time, although it may
22 take a few minutes.

23 MR. SMEREK: That -- that sounds -- we
24 would agree with that approach. It sounds like a
25 reasonable approach.

1 THE COURT: All right.

2 So tell me in the remaining minutes that
3 I'm going to give you here, tell me of all the
4 issues that are raised here, right, and -- and --
5 and they are of course the three that we've been
6 talking about, the -- the seven-hour limit, the
7 ten-hour limit, the 14-hour limit, whether a witness
8 previously testified, and the distinction between
9 coordinated and un- -- uncoordinated depositions,
10 what is most important to The People as -- on the
11 issues that -- that separate the two parties here?

12 MR. SMEREK: I -- I think, Your Honor,
13 we've probably talked about them. I think --

14 THE COURT: Okay.

15 MR. SMEREK: -- the IH limitation is -- is
16 a particular challenging one for us.

17 THE COURT: Right, but I've --

18 MR. SMEREK: -- especially --

19 THE COURT: -- I've -- I've thrown out an
20 idea --

21 MR. SMEREK: Yes.

22 THE COURT: -- that might satisfy you on
23 that. And, again, you've indicated you're -- you're
24 grudgingly prepared to accept it.

25 MR. SMEREK: And -- and the only caveat to

1 that would be, as a practical matter, how it
2 interacted with orders that would be entered into
3 the other cases if they were entered without that
4 type of limitation.

5 THE COURT: So we could add that on in a
6 further subparagraph and then we'd be done.

7 MR. SMEREK: I -- I -- reserving the right
8 to receive whatever Your Honor and comment on it,
9 yes.

10 THE COURT: I -- I should say, I do not
11 promise not to be an expert wordsmith, and I'm sure
12 that the parties will have good reasons to criticize
13 what I come up with, but I'm -- I'm just trying to
14 find a way through all this because it's -- it's --
15 in -- in all candor, it's very hard to talk about
16 articulately for the record and to figure out where
17 we are.

18 And maybe the easiest way to do it is to
19 hear both sides' principal concerns, and then give
20 me a chance to -- to bang something out for you all
21 to take a look at.

22 MR. SMEREK: We would appreciate that.
23 Thank you.

24 THE COURT: All right.

25 Mr. Hodges.

1 MR. HODGES: Thank you, Your Honor.

2 So it -- it's an interesting idea, and
3 we -- we would very much like to see what Your Honor
4 comes up with. We think it's a -- it's a good
5 starting point. It might moot some of the
6 individual provisions in our proposal.

7 THE COURT: Right.

8 MR. HODGES: So I -- I won't talk about
9 all those.

10 I do think that having a seven-hour limit
11 on depositions is important if there is going to be
12 coordination. I know that it's not the norm, but
13 there are going to be quite a few depositions in
14 this case. The FTC has said it may take up to 80
15 party depositions. The Attorney General has said it
16 may take up to 60. It doesn't make sense to have
17 time limits on coordinated depositions and then no
18 time limits whatsoever on uncoordinated depositions.

19 THE COURT: So let -- let me tell you
20 where I was going on that one. And, you know, maybe
21 this is an example of a situation where my
22 wordsmithing will not be subject to high praise by
23 both sides.

24 But the -- the current Amazon proposal
25 says, "For any deposition of an Amazon witness where

1 the other Plaintiffs' attorneys do not participate,"
2 that is the so-called uncoordinated depositions,
3 "the parties agree that the examination by The
4 People shall be limited to no more than one day,
5 with no more than seven hours on the record." [As
6 read]

7 What I had in mind there was very minor
8 and would provide what I suppose might be referred
9 to as wiggle room, which is simply to insert the
10 word "generally."

11 The parties agree that the examination by
12 The People generally shall be limited to no more
13 than one day, with no more than seven hours on the
14 record.

15 That qualifier implicitly -- and maybe we
16 need to add some explicit language, but implicitly
17 says, look, if you get to the end of the day and
18 both sides agree in good faith we're about to
19 complete Topic D, well, we really only really need
20 an hour or two, that you could agree in real time,
21 all right, let's -- let's do that now or let's do
22 that tomorrow morning, depending on how tired the
23 witness is, but it wouldn't be carved in stone.
24 That was my thought.

25 But it does set, as you've suggested, kind

1 of a presumptive rule or, if you will, expectation.
2 That was my thought on how to deal with that one.

3 I -- I -- I do think that it's very hard
4 at the beginning of a case -- and I recognize this
5 case is further along than perhaps most in the
6 beginning of most litigation cases, but it's very
7 hard to anticipate all of the twists and turns and
8 where things may go and how much time people may
9 need and what's going to be coordinated and what
10 isn't and how much overlap there really is and -- so
11 I think there's a need for some wiggle room.

12 Now, some of it I think is implicit in
13 everything that we're doing here, which is to say
14 that once these orders are entered, the overriding
15 assumption is that counsel are going to meet and
16 con- -- confer in good faith and that there are
17 going to be informal agreements. Yeah, we can go
18 for another half an hour; or, yeah, you can get into
19 that additional topic, but the witness has to get on
20 a flight tomorrow morning at noon or -- whatever the
21 case may be; right? But that was just my thought on
22 how to deal with that.

23 MR. HODGES: It -- I think that will work.
24 I mean truly there's only one uncoordinated piece of
25 this case that doesn't overlap with the FTC case.

1 It's a -- it's a [verbatim] allegation involving how
2 pricing is done for vendors or -- or wholesalers to
3 Amazon. It -- it shouldn't be a seven-hour day.
4 And that -- that would be the only uncoordinated
5 type of deposition.

6 So I -- I think what Your Honor proposes
7 would -- should work.

8 THE COURT: All right.

9 Are there other things that are -- and you
10 think it's important, now that we've had this
11 discussion -- and I admittedly have interrupted a
12 lot as -- as my.

13 Are there other things that are critical
14 from your perspective?

15 MR. HODGES: The -- the only thing I want
16 to say is we've talked a lot about coordination in
17 terms of easing burden on witnesses, and -- and that
18 is very important. That's a very important goal --

19 THE COURT: Sure.

20 MR. HODGES: -- to Amazon. But it also
21 benefits all of the Plaintiffs, the Attorney
22 General, the FTC, all of the states that have sued.
23 They -- they are going to have the ability to pull
24 resources, to divide up responsibility for
25 depositions, to assign different -- deposition

1 questioning to different people, so we shouldn't
2 talk about coordination as if these are separate
3 cases that will just simply be where there'd be
4 questioning seriatim.

5 This is -- this is going to be
6 coordinated, and it allows all the parties to do
7 more than they would have. And so when we were
8 thinking in terms of time limits, that's how we were
9 thinking about how coordinated depositions would
10 work. And -- and we still think that that's --
11 that's the right way to view the coordination
12 proposal.

13 THE COURT: Okay. Let me -- let me ask
14 you one more very specific questions [verbatim], the
15 question I started out by asking Mr. Smerek, I'm not
16 sure I got a complete answer to it, but the initial
17 question was a very elementary one, which is, okay,
18 if we're talking about these two-day deponents,
19 where did the ten come from and where did the three
20 come from?

21 So where did the three come from?

22 MR. HODGES: So we had originally offered
23 up ten hours for witnesses that had not been deposed
24 before. And --

25 THE COURT: Right.

1 MR. HODGES: -- that combined with the 49
2 investigative hearing depositions that had been
3 taken, we thought that was sufficient. We offered
4 up three simply as a compromise, as a way to try to
5 reach an agreement. We think there is not a need
6 for two-day depositions, honestly.

7 If Your Honor thinks that two-day
8 depositions are needed on the terms that you've
9 described, then our ten-day proposal doesn't need to
10 be in this order at all. I said ten day. I meant
11 ten hour. I apologize.

12 THE COURT: Okay. So you're -- you're --

13 MR. HODGES: So let -- let me -- let me
14 back up because that was confusing.

15 So we had originally said that -- we -- we
16 had asked for a seven-hour limit on depositions --

17 THE COURT: Right.

18 MR. HODGES: -- as I've discussed. We
19 said that if it -- if there was a witness who had
20 not testified in an IH previously, we would be
21 agreeable to ten hours.

22 THE COURT: Right.

23 MR. HODGES: If what Your Honor is saying
24 is that there would be 14-hour depositions for
25 witnesses who have not testified previously --

1 THE COURT: Right.

2 MR. HODGES: -- then there would not be a
3 need --

4 THE COURT: For the ten-hour limit.

5 MR. HODGES: -- that ten-hour deposition.

6 THE COURT: But the seven-hour limit would
7 apply to all depositions that are outside the
8 two-day limit whether coordinated or not?

9 MR. HODGES: Correct.

10 THE COURT: All right. We're making some
11 progress here.

12 MR. SMEREK: Your Honor, I -- I -- I -- I
13 think we're not making progress, or I'm very
14 confused at the last comment that was just made,
15 the --

16 THE COURT: I think this is -- let me --
17 let me see if I -- because it's important that I
18 understand it.

19 MR. SMEREK: Yes.

20 THE COURT: I think the proposal now is
21 that there be a presumptive seven-hour limit or
22 one-day limit on all the deponents other than those
23 who fall in the two-day category, which would
24 exclude witnesses who have previously testified in
25 the investigational hearing, if that's -- if

1 that's -- did I understand that correctly,
2 Mr. Hodges?

3 MR. HODGES: That's -- that's my
4 understanding.

5 THE COURT: All right.

6 MR. SMEREK: Your Honor, that's simply
7 Amazon's proposal and --

8 THE COURT: Right. But I wanted -- I
9 wanted to understand his proposal.

10 MR. SMEREK: Oh, okay. Thank you.

11 If -- if that -- I -- I just wanted to be
12 clear if that -- that that is Amazon's proposal and
13 not the compromise that you had suggested that we
14 thought was --

15 THE COURT: I'm trying to find a way
16 toward -- just as I did with the case schedule, find
17 a way toward -- a way of crafting an order that
18 would be acceptable to both sides. If -- if the
19 number on the two-day group I mean is large enough,
20 then presumably you shouldn't have too much of a
21 problem with that.

22 MR. SMEREK: And -- and -- and it may be,
23 Your Honor, that I should reserve comment until I
24 see what you come back with.

25 THE COURT: I'm -- I'm sorry to keep

1 interrupting. I just -- this is -- this is -- maybe
2 this just illustrates I'm not a very good chess
3 player. I'm not sure.

4 Is it your -- are you still wedded to the
5 idea of essentially having three categories here, a
6 seven-hour limit or presumptive rule, whatever we
7 want to call it, presumptive standard, a ten-hour
8 rule for coordinated depositions, and then a -- an
9 exceptional category, if you will, for two-day
10 depositions? Do you think that's critical or --

11 MR. SMEREK: If -- if there's --

12 THE COURT: -- important from your
13 standpoint?

14 MR. SMEREK: -- if there's going to be
15 a -- a limit on depositions that are taken only in
16 our case, we agree that that -- that should be
17 separate from coordinated deposi- -- the answer is
18 yes.

19 If there's going to be a first limit, we
20 think that should be separate. The ten-hour limit
21 for coordinated depositions, that is the default
22 that we agreed to.

23 THE COURT: Right.

24 MR. SMEREK: And that is the default that
25 we agreed to and Amazon had agreed to back in

1 January when we were first talking about it. They
2 didn't have this carveout for IHs. That was new
3 based on comments you made at one of the CMCs.

4 And for that, essentially -- if we get rid
5 of that category, what you're essentially doing is
6 eliminating our -- our ability to take testimony on
7 the nonoverlapping issues in our case. And that's
8 because already --

9 (Simultaneous speaking.)

10 THE COURT REPORTER: I'm sorry --

11 THE COURT: I'm sorry. Madam Reporter, I
12 apologize. Bad habit of mine.

13 Essentially what you're saying is the --
14 which makes sense to me, is that the coordinated
15 depositions, because they involve multiple
16 Plaintiffs' counsel and because they involve
17 somewhat broader and nonoverlapping issues, or at
18 least an issue, are going to take longer necessarily
19 than -- than the -- than depositions that are taken
20 just on this case?

21 MR. SMEREK: Correct.

22 THE COURT: Okay.

23 MR. HODGES: I would -- I would not agree
24 with that, Your Honor. I -- there is -- Amazon is a
25 large organization. Peo- -- people have subject

1 merit -- matter areas that they work at.

2 So if you propose a witness who works in
3 the fulfillment area --

4 THE COURT: Right.

5 MR. HODGES: -- you don't need to ask him
6 about other parts of the business. You don't have
7 to ask him about advertising, for example, because
8 that witness is not going to know some- -- anything
9 about advertising.

10 So the idea that all these witnesses need
11 to be deposed on all topics just isn't going to be
12 accurate.

13 THE COURT: All right.

14 I -- I guess I have one overriding
15 question here, which I probably should have asked at
16 the beginning.

17 The parties, excuse me, are negotiating a
18 coordination protocol that would affect the other
19 cases. You've represented to me, I think, at the
20 last CMC, that the parties were in touch with the
21 FTC and that the FTC was generally amenable to the
22 kinds of provisions that we're talking about. But
23 there's nonetheless a carveout here that says, well,
24 if there's some other agreement that's either agreed
25 to or ordered by another court, i.e. the Federal

1 Court, then that will govern.

2 So where is the FTC on these issues? Are
3 they -- are they okay with the ten-hour limit?

4 MR. HODGES: They -- they haven't told us
5 that they're okay with the ten-hour limit. They
6 have marked up a proposal that substantially
7 corresponds to the proposal in this case.

8 THE COURT: Whose proposal in this case?

9 MR. HODGES: Well, it was -- it was ours.
10 It was ours in the first instance.

11 THE COURT: All right.

12 MR. HODGES: They do want more 14-hour
13 depositions, although we asked them the question,
14 "How did you arrive at that number?" And -- and
15 they didn't have a specific list of witnesses or
16 anything like that, which may -- led me to believe
17 that perhaps that number could come down.

18 THE COURT: And what was their number?

19 MR. HODGES: Their number was 20. Their
20 number was 20. But these are -- I'll go back to the
21 point these are going to be coordinated. The -- the
22 overlapping issues are going to be addressed by a
23 questioner. It's not as if each Plaintiff must come
24 in and repeat the same questions over and over.

25 There is going to be some sort of

1 coordination on the Plaintiffs' side, and they are
2 going to arrive at what questions they want to ask
3 in what length of time.

4 THE COURT: All right.

5 Let -- let me ask you one more question.
6 I'm -- you know, we're -- we're horse trading here.

7 MR. HODGES: Mm-hmm.

8 THE COURT: Assuming that what I'm
9 suggesting is acceptable to the parties in
10 principle, which is to say that part ^ -- out of the
11 two-day group can be witnesses who previously
12 testified in an IH, do you think the number that The
13 People have proposed of such depositions, i.e. ten,
14 is a reasonable one?

15 MR. HODGES: I think it could be lower
16 than ten.

17 THE COURT: All right.

18 I think that gives me enough to fool
19 around with this for a couple of minutes and come
20 back to you all.

21 And so if you don't mind taking a break.
22 I know the reporter will welcome one. Why don't we
23 take about 15 minutes?

24 And, Madam Reporter, my apologies. I
25 mean, I'm sorry to interrupt so much.

1 (Short recess taken, 2:45 p.m. -
2 2:58 p.m.)

3 THE COURT: All right.

4 We'll go back on the record, and I will
5 try not to interrupt you.

6 So let's see what you think of my draft.
7 What I've attempted to do here is essentially
8 combine the parties' proposals and -- and find a --
9 a reasonable solution that strikes me as sensible.
10 You'll see in yellow highlighting some of the
11 language that I just wanted to -- to flag.

12 But essentially I've kept the
13 three-category division among so-called
14 uncoordinated depositions, i.e. depositions held
15 solely in this case for which there would be a
16 presumptive seven-hour limit; coordinated
17 depositions, ten hours; and then a third
18 extraordinary category of so-called two-day
19 depositions that would exclude witnesses who had
20 previously testified in the investigational -- in
21 any investigational hearing, but would be limited to
22 eight rather than the ten proposed by The People
23 under the three proposed plans.

24 And then, finally, a catch-all in
25 subparagraph d that would recognize the practical

1 reality, that if there is either an agreement or an
2 order in the Federal Court that sets a different
3 limit, that that necessarily would apply here.

4 That's my thought. Do you all want to
5 take a minute to think about it, talk between
6 yourselves, and -- and answer the similar question,
7 which is, even if it wouldn't thrill you, are you
8 nonetheless grudgingly amenable to accepting it?

9 MR. HODGES: If we could have a -- a few
10 minutes --

11 THE COURT: Of course.

12 MR. HODGES: -- amongst ourselves, we'd
13 appreciate it.

14 THE COURT: Of course.

15 I -- I should say one other thing, which
16 is I've -- I've tried, as best I can, not to alter
17 the existing language. So that, for example, the --
18 you know, there's no -- there's no real disagreement
19 about the -- the -- the -- the ten-hour language --
20 well, all right. Let me -- let me try to do that --
21 all I'm saying is I have not really altered any of
22 you -- your language.

23 What I've done is I've picked and chosen
24 among different provisions and tried to combine them
25 in a way that struck me as sensible.

1 But why don't -- why don't you take the
2 time necessary to compare them, and I'm happy to
3 wait.

4 (Off the record, 3:00 p.m. - 3:03 p.m.)

5 THE COURT: Mr. Smerek, would you like to
6 go first?

7 MR. SMEREK: Thank you, Your Honor.

8 I guess returning back to the comment I
9 made about your proposal on coordination originally,
10 we're not necessarily thrilled, but I think that
11 this is -- is something that we could be amenable
12 to.

13 I would make two points.

14 THE COURT: All right.

15 MR. SMEREK: The first one, on Paragraph
16 A, we would propose that the -- the section "and
17 after no more than one day" [as read], and there
18 what I -- I would point out, we -- we -- we believe
19 that most all, if not all, of the depositions that
20 are not part of a coordinated proceeding can be
21 resolved in a day.

22 The concern we have over inserting seven
23 hours is that invariably at seven hours there will
24 be some kind of, all right, the day is over. And
25 rather than having the day -- having there be

1 dispute over if it's seven hours and five minutes or
2 seven hours and 15 minutes, we think it would be
3 sufficient guidance here that it just ended at --
4 the provision ended at a single day.

5 So we would --

6 THE COURT: Doesn't -- doesn't the legal
7 word "generally" solve that problem?

8 MR. SMEREK: Your Honor, in experience
9 what -- what we will say is generally and what
10 Amazon will say in the moment is seven hours, and
11 they'll give some statement like, "We'll allow the
12 witness to answer two more questions, but we're
13 essentially done here."

14 THE COURT: Okay.

15 MR. SMEREK: And we think that it's --
16 it's just not warranted here. We did have an
17 investigation. The majority of depositions were
18 completed in a day. Many of them went less than
19 seven hours. Some of them went more than seven
20 hours.

21 If there are any -- as Your Honor noted,
22 if there are any issues, they can be brought to
23 Your Honor's attention, but we think it would be
24 sufficient guidance for the parties without that
25 clause, and that clause is just going to cause

1 more -- more problems or strife than it solves.

2 THE COURT: Okay. What's your second
3 comment?

4 MR. SMEREK: The second comment, on
5 Paragraph C, to the extent that this contemplates
6 investigational hearings that were conducted not by
7 us, just that it -- it be premised on an
8 understanding that Amazon agrees that it has
9 produced all of those transcripts to us because I --
10 I do not believe that that's necessarily the case.

11 And so we're -- we would not be thrilled
12 by that, but we can agree to it provided that we do
13 have the benefit actually of the transcripts that --
14 that would give rise to including this in the
15 provision.

16 THE COURT: Okay.

17 Mr. Hodges?

18 MR. HODGES: So I -- I understood the
19 first paragraph I think the same way Your Honor did,
20 and I -- I don't see that that's going to be a -- a
21 basis for a dispute.

22 I have some questions about Paragraph B.
23 So I assume what it means is that no -- well, The --
24 The People won't question a witness for more than
25 seven hours even if the deposition is ten hours, but

1 that's -- but that's a question for Your Honor.

2 THE COURT: No, that's -- that's not -- I
3 mean, this wasn't my language. This was somebody
4 else's language. But that's not what it says.

5 They -- I mean, how they divvy up the time
6 is up to them. The point here was to say no more
7 than seven hours on the record per day; in other
8 words, you can't make the poor deponent testify into
9 the darkness. But it's not seven hours for The
10 People.

11 If -- if for some reason, which I don't
12 anticipate, the FTC says, "Okay. We're -- we're
13 happy with 20 minutes. You guys take nine hours and
14 40 minutes' worth," they're free to divvy it up any
15 way they want to. That's the last thing I want to
16 start micromanaging here.

17 MR. HODGES: Well, I -- I would suggest
18 that the FTC is limited to seven hours in its -- in
19 its questioning of any witness. And I would suggest
20 that a similar limit should apply here for the good
21 of the order so that we have corresponding and
22 similar agreements; right?

23 I don't think that any party -- I don't
24 think that The People's seven hours should be
25 extended if they find themselves in a coordinated

1 deposition and the FTC says, "No, we -- we're not
2 going to take any of that time." That -- that's
3 a -- that's a way to get around the limit.

4 THE COURT: With respect, that's an issue
5 that nobody brought up in this joint case management
6 statement, and it -- it's -- it's -- it's at a level
7 of micromanagement that I don't think is warranted
8 here.

9 MR. HODGES: Okay.

10 THE COURT: But go ahead.

11 MR. HODGES: Okay. Understood.

12 And then the second question for Paragraph
13 B is that -- that this would apply to -- to all
14 witnesses. This would be the -- the presumptive
15 limit, witnesses who were deposed in an IH
16 previously, witnesses who were not deposed
17 previously, unless they were subject to the 14 hours
18 of Paragraph C.

19 Is that correct?

20 THE COURT: That's -- that was my
21 intention in drafting it --

22 MR. HODGES: Okay.

23 THE COURT: -- to the extent that my
24 intention matters here.

25 MR. HODGES: Okay.

1 THE COURT: I think what matters more is
2 the words and that you all understand them.

3 MR. HODGES: Okay. I think I do. I --
4 you know, this is not what we would have come up
5 with on our own, but I think it's something we can
6 live with.

7 THE COURT: All right.

8 So can you just answer Mr. Smerek's
9 question? Has Amazon produced transcripts of all
10 investigational hearings that were held by other
11 agencies?

12 MR. SMEREK: I -- I don't think they were
13 ever requested in discovery, believe it or not. Our
14 understanding was that -- that The People had them
15 from the FTC.

16 THE COURT: Okay. Well, let me -- and I'm
17 getting negative head shaking at The People's table.
18 Let me -- let me suggest, then, that if they haven't
19 been requested in discovery -- and, again, I'm --
20 I'm seeing body language that suggests that The
21 People think they have -- that you all ought to be
22 able to work that out informally and -- and have
23 those things produced.

24 MR. SMEREK: Your Honor, this is
25 Mr. Smerek. We -- we made that request of Amazon in

1 connection with the meet and confer when they --
2 they proposed that their limit extend beyond IHs
3 that -- investigative hearings that we took, and --
4 and they were noncommittal and then suggested that
5 we needed to serve additional discovery requests.

6 They absolutely have been requested. And
7 what -- what I would suggest is if Amazon wishes to
8 argue for inclusion of this in the order, they --
9 they should commit on the record, right, the -- the
10 basis for this is that it will be easier for us,
11 that we will need less time because we will have the
12 benefit of these transcripts. We have made known
13 that we believe they've been requested. We
14 definitely need them in order to take advantage of
15 this. And we'd just like a confirmation that we're
16 not going to have a battle over production of those.

17 THE COURT: Can you make that
18 representation, Mr. Hodges?

19 MR. HODGES: I -- I -- I can, but I -- I
20 would like to know whether The -- The People already
21 have them from the FTC, because that was our
22 understanding.

23 THE COURT: Okay. Let -- let me ask
24 counsel to deal with this issue offline. I'm
25 confident that you'll be able to resolve it.

1 MR. SMEREK: Thank you, Your Honor.

2 THE COURT: All right.

3 MR. HODGES: Thank you, Your Honor.

4 THE COURT: All right.

5 So what I'm going to ask somebody to do,
6 and one or the other of you is going to raise your
7 hand and volunteer to do this, is to incorporate
8 this language without change, other than deleting
9 the highlighting, into the proposed coordination
10 protocol, finalize that document, circulate it for
11 signature, and submit it to me for signature.

12 Does somebody want to volunteer to do
13 that?

14 MR. METZ: We will -- we will do that.

15 THE COURT: All right. Okay.

16 So those are the two topics that you
17 raised to address -- for me to address today.

18 All right. You know, I'd like to get a
19 sense, if I may, just informally here, as to where
20 things stand with respect to document discovery,
21 which is presumably where you all are now, and just
22 to get a -- a brief overview and a sense as to when
23 you anticipate that fact depositions may commence,
24 recognizing that we're talking about a large volume
25 of documents, multiple productions, multiple issues

1 having to do, I'm sure, with privilege logs and
2 redactions and -- and confidentiality designations
3 and the like.

4 But maybe I can hear from both sides
5 quickly just to tell me where things stand.

6 You're the Plaintiff, but if you want to
7 defer --

8 MR. SMEREK: Yeah.

9 THE COURT: -- to Mr. Hodges, that's fine.

10 MR. SMEREK: He -- he was standing, and
11 I -- I didn't want to try to jump in front of him.

12 Your Honor, first, before -- before I
13 answer that question, housekeeping, on the schedule,
14 will -- will Your Honor take care of the schedule?
15 I know we've discussed dates. Did you want the
16 parties to prepare something on that as well or --

17 THE COURT: I will issue an order.

18 MR. SMEREK: Okay. Thank you, Your Honor.

19 THE COURT: And you all will correct me if
20 I got it wrong because there was a lot of back and
21 forth, but I'm -- I'm pretty confident that my notes
22 now reflect what it is.

23 MR. SMEREK: Excellent.

24 Thank you, Your Honor.

25 With respect to discovery, the -- the

1 parties have agreed on a technology-assisted review
2 process. Amazon has been providing updates with
3 respect to that process. And in the last week to
4 ten days has -- has started substantial production
5 of documents.

6 I know we got, I -- I think, maybe two or
7 three productions since Friday. So we are
8 processing those materials. I -- I don't have
9 details with respect to the volume of materials in
10 those productions or updates and specifically where
11 we are on the TAR process for validation.

12 We are -- I think the issues have been
13 narrowed on -- and that is for the custodial
14 collection and production.

15 THE COURT: Right.

16 MR. SMEREK: The issues I think have been
17 narrowed on the centralized repositories, the -- the
18 information. So I -- I think we've made progress on
19 that.

20 I -- I will apologize, but I -- I am not
21 able to speak to what, if any, kind of issues remain
22 outstanding on that front, but the parties have made
23 progress. The documents have become -- started to
24 come in.

25 And as Your Honor has indicated, I do

1 believe that there is a large volume of materials
2 that we've started to get over the last few days at
3 least.

4 With respect to where we are after that,
5 our focus is on trying to close out the document
6 production now in the next couple of months,
7 especially now focused on reaching agreement on the
8 centralized repositories and getting that process
9 through.

10 And then we would expect now, with
11 coordination closed, that -- we have been continuing
12 on third-party discovery. And we would anticipate
13 that A- -- Amazon witnesses in the latter half of
14 this year and the beginning of next.

15 THE COURT: Okay. That's a useful
16 summary. So -- and when you say continue, there
17 have actually been some third-party depositions?

18 MR. SMEREK: There have been third-party
19 depositions. I think the next few are scheduled for
20 June -- June -- June and July at the moment.

21 THE COURT: Okay. Thank you.

22 MR. HODGES: I -- I generally agree with
23 all of that, Your Honor.

24 THE COURT: Okay.

25 MR. HODGES: I -- I think, you know, the

1 FTC case is proceeding more slowly because it was
2 filed later. And so there's ongoing written
3 discovery in that case and -- and document
4 productions in that case. And I think that that
5 will probably slow down the pace at which
6 coordinated depositions can occur. But I -- I think
7 in this case we're making good progress on
8 discovery.

9 THE COURT: Okay. One thing that occurs
10 to me based on recent experience where there were
11 parallel proceedings in this Court and in that case
12 in an MDL, at -- at some point there may be a reason
13 for me to communicate directly with Judge Chun
14 and/or the magistrate judge that's assigned there,
15 if there is such a person.

16 I don't know that I need formal permission
17 from the parties to do that, but I would -- I would
18 ask that you consider that request.

19 Right now there's no immediate need that I
20 can see, but I just want to throw that out there as
21 an issue. Sometimes coordination is better achieved
22 by communications between courts as opposed to among
23 counsel, but we'll see.

24 So I think that concludes our business
25 today, other than setting a date for our next

1 meeting.

2 I will tell you that I think you've
3 requested a date in June. And due to my trial
4 schedule, at least at the moment, my first available
5 dates are not until July. But I don't think that
6 that's going to be an insuperable problem here for
7 anybody.

8 So what if we looked at, say, the second
9 or third week of July, roughly 90 days out?

10 THE CLERK: July 9 at 10:00 a.m.

11 THE COURT: How about July 9 at
12 10:00 a.m.? Does anybody have a conflict with that?

13 MR. HODGES: No, Your Honor.

14 MR. SMEREK: No, Your Honor.

15 THE COURT: All right.

16 And -- and you're aware, of course, that
17 there's flexibility here, so that if there's a
18 reason to continue or advance a -- a date, to the
19 extent I can accommodate you, I'm happy to do that,
20 just communicate that with the clerk.

21 MR. HODGES: Thank you.

22 MR. SMEREK: Thank you.

23 THE COURT: All right.

24 Thank you all for your patience and your
25 good faith in working through these complicated

1 scheduling and drafting issues and putting up with
2 my drafting and my interruptions.

3 MR. SMEREK: Thank you, Your Honor.

4 MR. HODGES: Thank you, Your Honor.

5 (Proceedings adjourned, 3:18 p.m.)
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COURT REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)
_____)

I, Hanna Kim, hereby certify:

I am a duly qualified Certified Shorthand Reporter, in the State of California, holder of Certificate Number CSR 13083, issued by the Court Reporters Board of California and which is in full force and effect.

I am not financially interested in this action and am not a relative or employee of any attorney of the parties, or of any of the parties.

I am the reporter that stenographically recorded the testimony in the foregoing proceeding and the foregoing transcript is a true record of the testimony given.

April 23, 2024

Dated: _____



Hanna Kim, CLR, CSR No. 13083

EXHIBIT F

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TAFARI MBADIWE and RACHEL MILLER
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

AMAZON.COM, INC.,

Defendant.

Civil Action No. 1:22-cv-09542-VSB

STIPULATION COORDINATING DISCOVERY AND ORDER

Plaintiffs Tafari Mbadiwe and Rachel Miller, on behalf of themselves and all others similarly situated (“the *Mbadiwe* Plaintiffs”), and Defendant Amazon.com, Inc. (“Amazon,” and together with the *Mbadiwe* Plaintiffs, the “Parties”) have agreed and stipulated to certain issues regarding the coordination of discovery in the above-referenced action, and hereby jointly submit this Stipulation Coordinating Discovery and Proposed Order for approval and entry by this Court.

1. Fact discovery in the above-captioned case shall be coordinated with fact discovery in *FTC v. Amazon.com, Inc.*, No. 2:23-cv-01495-JHC (W.D. Wash.) (the “*FTC* case”) and *California v. Amazon.com, Inc.*, No. CGC-22-601826 (Cal. Super. Ct.) (the “*CA AG* case”).

- a. Amazon shall continue to produce documents that Amazon produces in the *CA AG* case to the *Mbadiwe* Plaintiffs on a rolling basis, to the extent they are relevant to the “parity” claims in the above-captioned action.
- b. Amazon shall produce documents that Amazon produces in the *FTC* case to the *Mbadiwe* Plaintiffs on a rolling basis, to the extent they are relevant to the “parity” claims asserted in the above-captioned action.
- c. Amazon shall produce documents that Amazon has produced in *Frame-Wilson v. Amazon.com, Inc.*, No. 2:20-cv-00424-JHC (W.D. Wash.) (“*Frame-Wilson*”) to the *Mbadiwe* Plaintiffs on a rolling basis, to the extent they are relevant to the “parity” claims in the above-captioned action.
- d. Within thirty (30) days of entry of this order, the *Mbadiwe* Plaintiffs shall serve a document request pursuant to Fed. R. Civ. P. 34 on Amazon for nonparty discovery materials that have been produced in *Frame-Wilson*, the *CA AG* case, or the *FTC* case that are relevant to the “parity” claims in the above-captioned action. Amazon shall produce such discovery materials subject to the

nonparty's right to object under the terms of the operative protective order in the case in which the documents were originally produced by the nonparty.

e. The *Mbadiwe* Plaintiffs may participate in depositions as set forth in the Coordination Protocol and Order entered on April 17, 2024, in the *CA AG* case, to the extent they are relevant to the "parity" claims asserted in the above-captioned action. The Coordination Protocol and Order dated April 17, 2024 is attached hereto as Exhibit 1.

f. The *Mbadiwe* Plaintiffs and Amazon shall use all reasonable efforts to coordinate the depositions of Amazon witnesses and nonparty witnesses across all of the coordinated cases (the *FTC* case, the *CA AG* case, *Frame-Wilson*, *De Coster v. Amazon.com, Inc.*, No. 2:21-cv-00693-JHC (W.D. Wash.), and *Brown v. Amazon.com, Inc.*, No. 2:22-cv-00965-JHC (W.D. Wash.)), absent either (i) agreement of the parties or (ii) a showing of good cause and order of the Court. Such depositions shall be subject to time limitations and other conditions to be set forth in a stipulated-to deposition protocol that the parties submit to the Court for approval.

2. Consistent with the deadlines set forth in the *FTC* case and the *CA AG* case, the fact discovery deadline in the above-captioned case shall be August 8, 2025;

3. The Parties shall meet and confer regarding expert discovery within sixty (60) days of the close of fact discovery; and

4. Within 21 days of the resolution of all summary judgment motions in the *FTC* and *CA AG* cases, should this case still be pending, the parties shall meet and confer and submit a proposed schedule for class certification briefing in the above-captioned case.

5. The Parties agree to the above-described schedule for the purpose of facilitating coordinated discovery. In the event Judge Chun denies Defendant Amazon.com, Inc.'s Motion for Coordinated Discovery Schedule, *see Frame-Wilson*, Dkt. No. 139, the Parties will meet and confer to submit an alternate proposed case management schedule within sixty (60) days of such denial.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

Dated: May 20, 2024

Respectfully submitted,

/s/ Daniel Goldman

Daniel Goldman
dgoldman@bklwlaw.com
Bienert Katzman Littrell Williams LLP
903 Calle Amanecer, Suite 350
San Clemente, CA 92673
Tel: (949) 369-3700

/s/ Gordon Ball

Gordon Ball (*pro hac vice*)
gball@gordonball.com
Gordon Ball, PLLC
3728 West End Avenue
Nashville, Tennessee 37205
Tel: (865) 525-7028

*Counsel for Plaintiffs and the Putative
Classes*

/s/ Amy J. Mauser

Karen L. Dunn (*pro hac vice*)
William A. Isaacson (*pro hac vice*)
Amy J. Mauser (*pro hac vice*)
Yotam Barkai
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
2001 K Street, NW
Washington, DC 20006
Tel: (202) 223-7300
Fax: (202) 223-7420
kdunn@paulweiss.com
wisaacson@paulweiss.com
amauser@paulweiss.com
ybarkai@paulweiss.com

Attorneys for Defendant Amazon.com, Inc.

IT IS SO ORDERED.

Dated: May 22, 2024



Hon. Vernon S. Broderick
United States District Judge

Exhibit 1

FILED
San Francisco County Superior Court

APR 17 2024

CLERK OF THE COURT
BY: Christina Green
Deputy Clerk

1 ROB BONTA (SBN 202668)
Attorney General of California
2 PAULA BLIZZARD (SBN 207920)
Senior Assistant Attorney General
3 NATALIE S. MANZO (SBN 155655)
JAMIE L. MILLER (SBN 271452)
4 Supervising Deputy Attorney General
ROBERT B. McNARY (SBN 253745)
5 STEPHEN R. SMEREK (SBN 208343)
Deputy Attorneys General
6 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
7 Telephone: (213) 269-6000

8 *Attorneys for Plaintiff and Cross-Defendant*
The People of the State of California

9
10 HEIDI K. HUBBARD (*pro hac vice*)
WILLIAMS & CONNOLLY LLP
680 Maine Ave. SW
11 Washington, DC 20024
Tel.: (202) 434-5000

12 Jeffrey M. Davidson (Bar No. 248620)
13 COVINGTON & BURLING, LLP
415 Mission Street, Suite 5400
14 San Francisco, CA 94105
Tel: (415) 591-6000

15 *Attorneys for Defendant and Cross-Complainant*
16 *Amazon.com, Inc.*

17 (*additional counsel listed below*)

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **COUNTY OF SAN FRANCISCO**

21 **THE PEOPLE OF THE STATE OF**
CALIFORNIA,
22 Plaintiff / Cross-Defendant,
23 v.
24 **AMAZON.COM, INC.,**
25 Defendant / Cross-Complainant.

CASE NO. CGC-22-601826

STIPULATED COORDINATION
PROTOCOL AND [PROPOSED] ORDER

Dept.: 304

Judge: Hon. Ethan P. Schulman

Case Filed: September 15, 2022

Trial Date: August 10, 2026

Plaintiff The People of the State of California ("The People") and Defendant Amazon.com, Inc. ("Amazon") have agreed and stipulated to certain issues regarding the coordination of deposition discovery in the above-referenced action ("Action"), and hereby jointly submit this Stipulated Coordination Protocol and Proposed Order ("Coordination Order") for approval and entry by the Court.

I. DEFINITIONS

1. The following definitions shall apply for the purposes of this Order:

a. Amazon Representative: Any person who is identified to testify on Amazon's behalf as a corporate representative in response to a deposition notice of Amazon.

b. Amazon Witness: Any person who is (i) a current employee or officer of Amazon, (ii) a former employee or officer of Amazon who is represented by Counsel for Amazon. Upon receipt of a deposition notice from The People for a former employee or officer of Amazon, Counsel for Amazon shall have fourteen (14) calendar days to notify The People in writing if the former employee or officer is represented by Counsel for Amazon. If Counsel for Amazon does not provide notice that it represents a former employee or officer within fourteen (14) calendar days, the deposition shall be governed by the provisions of Section V covering Non-Party witnesses, unless otherwise agreed to by the Parties.

c. Coordinated Deposition: A deposition conducted pursuant to this Coordination Order wherein Other Plaintiffs' Attorneys for at least one of the Other Pending Actions participate in said deposition.

d. Counsel for Amazon: Counsel of record for Amazon.com, Inc. in this Action.

e. Non-Party: Any natural person, partnership, corporation, association, or other legal entity not named as a Party.

f. Other Pending Actions: *Frame-Wilson et al. v. Amazon.com Inc.*, No. 2:20-cv-00424-JHC (W.D. Wa.); *De Coster et al. v. Amazon.com, Inc.*, No. 2:21-cv-00693-JHC (W.D. Wa.); *Brown et al. v. Amazon.com, Inc.*, No. 22-cv-00965-JHC (W.D. Wa.); *Federal Trade Commission, et al. v. Amazon.com, Inc.*, No. 2:23-cv-01495-JHC (W.D. Wa.); and any other civil action in or approaching active discovery involving substantially similar claims, which is identified and agreed by the Parties in writing.

g. Other Plaintiffs' Attorneys: Counsel of record for plaintiffs in the Other Pending Actions as identified in the preceding subparagraph d.

h. Party or Parties: Any entity named a plaintiff or defendant in this Action.

II. GENERAL PROVISIONS

2. This Coordination Order shall be effective only upon agreement of the Parties and approval of the Court.

3. The close of fact discovery shall be extended to August 8, 2025. The Parties shall meet and confer and present the Court with proposed adjustments to the balance of the pretrial schedule within thirty (30) calendar days of the execution and entry of this Coordination Order.

4. This Coordination Order applies to the Parties in the Action, and provides protocols applicable to conducting deposition discovery in this Action. Nothing in this Coordination Order shall preclude or otherwise restrict Amazon from engaging in further coordination efforts in the Other Pending Actions or in any other action, but no such efforts by Amazon shall modify this Coordination Order, be binding on The People, or otherwise have any effect on the present Action.

5. Either Party may seek to later modify this Coordination Order for good cause. Prior to doing so, the Parties shall meet and confer in good faith to reach agreement as to the appropriate scope of any modifications. For the avoidance of doubt, this Coordination Order may be amended only by subsequent written stipulation among the Parties and a corresponding approval by the Court; however, if the Parties jointly agree, they may agree to modify the time periods for providing notice set forth herein without modification of this Coordination Order or the Court's approval.

6. Amazon represents that it is engaged in efforts to negotiate and have substantially similar orders entered in each of the Other Pending Actions. To the extent that any dispute arises regarding the conduct of Coordinated Depositions related to terms of coordination contained in orders entered in Other Pending Actions that differ from or conflict with this Coordination Order, the Parties shall meet and confer to determine if modifications of this Coordination Order may be necessary to facilitate efficient coordination with the Other Pending Actions.

7. Unless otherwise expressly agreed to and ordered by this Coordination Order, discovery in this Action shall be governed by the applicable provisions of the California Rules of Court, the California

Code of Civil Procedure, and the California Evidence Code, and any other applicable provisions that would apply to govern discovery in the absence of this Coordination Order.

8. Both Parties reserve all rights to formally object (by motion or otherwise) to any deposition or deposition examination on any grounds and seek appropriate relief from the Court as warranted. For the avoidance of doubt, and notwithstanding anything in this Coordination Order, Amazon shall retain all rights to object (by motion or otherwise) to the taking of a particular deposition or to the timing or length of such a deposition in this Action or in the Other Pending Actions. For the further avoidance of doubt, and notwithstanding anything in this Coordination Order, The People shall retain all rights to seek (by motion or otherwise) additional time for the taking of a particular deposition in this Action.

9. For any Coordinated Deposition, each Party or Other Plaintiffs' Attorneys may notice, take, defend, or otherwise participate in any such deposition either in person, or remotely, in their sole discretion notwithstanding how any other Party or Other Plaintiffs' Attorneys elect to notice, take, defend, or otherwise participate in such deposition. For the avoidance of doubt, if a deposition is noticed to take place in person, nothing in this Coordination Order shall permit the witness to appear other than in person except by agreement of the noticing Party.

10. For the avoidance of doubt, any testimony in a Coordinated Deposition will be deposition testimony given in this Action whether the examination was conducted by The People or Other Plaintiffs' Attorneys. For the further avoidance of doubt, both Parties reserve all rights to object to the admissibility of such testimony pursuant to the applicable provisions of the California Rules of Court, the California Code of Civil Procedure, the California Evidence Code, and any other applicable law.

11. With respect to any Coordinated Deposition of an Amazon Witness or Amazon Representative that The People intend to notice pursuant to this Coordination Order, the Parties agree that The People may share (and receive from the Other Plaintiffs' Attorneys) materials produced by Amazon in this Action that are reasonably contemplated by The People to be shown to the witness subject to a Coordinated Deposition, or necessary to understand the import of such documents, or information derived from such materials, designated by Amazon as Confidential or Highly Confidential – Attorneys' Eyes Only under the January 27, 2023 Stipulation and Protective Order (the "Protective Order") with any participating Other Plaintiffs' Attorneys for the sole purpose of preparing for and/or taking such

Coordinated Deposition provided that such Other Plaintiffs' Attorneys agree to maintain the confidentiality of such materials as if they had been so designated under the operative protective orders entered in the Other Pending Actions. For the avoidance of doubt, the sharing contemplated by this Paragraph shall be constrained to what is reasonably necessary for the purposes of executing Coordinated Depositions and shall not generally supersede or negate discovery limitations or protective order restrictions otherwise applicable in each individual case.

12. For the further avoidance of doubt, nothing in this Coordination Order permits any Party to take more than one deposition of any witness without agreement of the Parties and witness and/or leave of Court.

III. DEPOSITIONS OF AMAZON AND AMAZON WITNESSES FIRST NOTICED IN THIS ACTION

13. To the extent The People seek the deposition of Amazon or an Amazon Witness in the Action, The People shall issue a deposition notice to Counsel for Amazon, for a date not sooner than sixty (60) calendar days from the date the notice is served. Counsel for Amazon shall provide the deposition notice to the Other Plaintiffs' Attorneys for the purpose of facilitating potential coordination of such deposition as may be appropriate in connection with the Other Pending Actions.

14. Counsel for Amazon shall use best efforts to confirm The People's proposed date or, to the extent the witness or counsel is unavailable, provide one or more alternative dates for the deposition within fourteen (14) calendar days of receiving The People's deposition notice. If alternative dates are provided, Counsel for Amazon shall use best efforts to provide at least one alternative date within fourteen (14) calendar days of The People's initial proposed date. The Parties shall thereafter meet and confer on a reasonable and appropriate date, time, and location for the noticed deposition.

15. Notwithstanding anything in this Coordination Order, The People shall retain all rights to depose any Amazon Witness by providing the notice required by statute if the sixty (60) day notice period contemplated herein would require the deposition of Amazon or an Amazon Witness to take place after the close of fact discovery in this Action. If the witness is not reasonably available on the date noticed, Amazon shall promptly notify The People, and the Parties shall meet and confer within five (5) calendar days thereof regarding a reasonable and appropriate date, time, and location for the noticed deposition,

1 which may be conducted after the close of fact discovery in the event the Amazon Witness cannot
2 reasonably be made available on an earlier agreed-date.

3 16. The Parties agree that the Parties, Other Plaintiffs' Attorneys, and Counsel for Amazon in
4 the Other Pending Actions may attend and participate in Coordinated Depositions to the fullest extent
5 permitted under applicable rules, including this Coordination Order and any Order of the Court in this
6 Action. The Parties' use of Coordinated Deposition testimony, or exhibits, designated as "Confidential"
7 or Highly-Confidential" shall be governed by the Protective Order (and use of such materials by Other
8 Plaintiffs' Attorneys shall be governed by the operative protective orders entered in the Other Pending
9 Actions) provided that no Party, their counsel, or Other Plaintiffs' Attorneys shall be excluded from any
10 portion of a Coordinated Deposition or prohibited access to deposition exhibits marked at a Coordinated
11 Deposition. For the avoidance of doubt, both Parties reserve all rights to object to the admissibility of
12 such testimony pursuant to the applicable provisions of the California Rules of Court, the California Code
13 of Civil Procedure, the California Evidence Code, and any other applicable law.

14 17. For any deposition of an Amazon Witness where Amazon provided notice to the Other
15 Plaintiffs' Attorneys contemplated by Paragraph 13, but the Other Plaintiffs' Attorneys do not participate,
16 the Parties agree that the examination by The People generally shall be limited to no more than one (1)
17 day, with no more than seven (7) hours on the record.

18 18. For any Coordinated Deposition of an Amazon Witness, the Parties agree that examination
19 by The People and Other Plaintiffs' Attorneys shall be limited to no more than a combined total of ten
20 (10) hours on the record, with no more than seven (7) hours on the record per day unless otherwise agreed
21 to by the Amazon Witness.

22 19. Notwithstanding the limit set forth in Paragraphs 17 and 18, The People, together with
23 Other Plaintiffs' Attorneys, may identify up to a combined total of eight (8) Amazon Witnesses, where
24 the Amazon Witness has not previously testified in a pre-Complaint investigational hearing in this Action
25 or any of the Other Pending Actions, for whom their Coordinated Deposition shall be limited to no more
26 than a combined total of fourteen (14) hours on the record, with no more than seven (7) hours per day
27 unless otherwise agreed by the Parties and the Amazon Witness. The People, and the Other Plaintiffs'
28 Attorneys, shall identify such Amazon Witnesses by providing Counsel for Amazon with written notice

no later than thirty (30) calendar days prior to the date of such deposition. Amazon reserves the right to object to such extended deposition time limit for any specific Amazon Witness by providing written notice of such objection to The People, and Other Plaintiffs' Attorneys, within five (5) business days. Thereafter, the Parties shall meet and confer to try to resolve any such objection. If a dispute remains, Amazon may seek relief from the Court in this action for Coordinated Depositions first noticed in this action; however, absent agreement of the Parties or Order of the Court, the fourteen (14) hour limit shall apply to such deposition.

20. Notwithstanding the time limits set forth in Paragraphs 18 and 19, should Amazon agree to higher time limits for any Coordinated Depositions, or should any order in the Other Pending Actions be entered permitting higher time limits for any Coordinated Depositions, such higher time limits shall apply to any such Coordinated Depositions taken in this action.

21. In the event Amazon seeks to coordinate testimony from one or more Amazon Representatives offered in response to a deposition notice to Amazon pursuant to Section 2025.230 of the California Code of Civil Procedure, Amazon shall identify the designated topics for which it proposes offering coordinated testimony at the time Amazon serves its responses and objections to such deposition notice. Thereafter, the Parties agree to meet and confer in good faith concerning the coordination of such deposition, including the scope of testimony and appropriate time limits for said deposition. If Amazon fails to provide timely notice as contemplated under this Paragraph, The People may elect to proceed with the deposition on the topics as noticed, or to meet and confer concerning coordination, in their sole discretion. For the avoidance of doubt, nothing in this Paragraph shall affect Amazon's right to object to any deposition notice issued by The People pursuant to Section 2025.230 on any grounds.

IV. DEPOSITIONS OF AMAZON AND AMAZON WITNESSES FIRST NOTICED IN THE OTHER PENDING ACTIONS.

22. In the event Amazon receives a notice or subpoena for the deposition of Amazon or an Amazon Witness in any Other Pending Actions, Counsel for Amazon shall notify The People of such notice or subpoena and provide The People a copy thereof within seven (7) calendar days of receiving such deposition notice, and at least fifty-three (53) calendar days before the date on which the deposition is noticed. For the avoidance of doubt, notice fails to comply with this Paragraph if it is not provided at

1 least fifty-three (53) calendar days before the date on which the deposition is first noticed unless Amazon
2 is served with the deposition notice less than sixty (60) calendar days before the date on which the
3 deposition is first noticed, in which case, notice to The People fails to comply with this Paragraph if
4 Amazon does not provide such notice within three (3) business days after timely service upon Amazon in
5 such Other Pending Actions and at least thirty (30) calendar days before the date on which the deposition
6 is first noticed.

7 23. Upon receipt of a notice from Amazon for the deposition of an Amazon Witness, The
8 People shall have fourteen (14) calendar days to notify Counsel for Amazon in writing whether The People
9 also intend to notice such Amazon Witness for deposition in the present Action such that the deposition
10 will be a Coordinated Deposition, and whether The People are able to proceed with such deposition as
11 noticed in the Other Pending Action. For avoidance of doubt, the timing provisions for issuing a
12 deposition notice under Paragraph 13 shall not apply in such circumstances.

13 24. To the extent The People elect to proceed with a Coordinated Deposition but are
14 unavailable to proceed with the deposition on the date noticed in an Other Pending Action, or to the extent
15 The People require reasonable additional time to prepare, the Parties will use best efforts to coordinate
16 with each other and the appropriate Other Plaintiffs' Attorneys in the Other Pending Actions to identify
17 mutually-agreeable dates for the coordinated deposition taking into consideration the status of discovery
18 and operative case schedules in this Action and the relevant Other Pending Actions.

19 25. The People in their sole discretion may elect to participate in a Coordinated Deposition
20 whether or not Amazon provides notice in compliance with Paragraph 22. To the extent The People elect
21 to participate in the Coordinated Deposition of an Amazon Witness first noticed in any Other Pending
22 Action, the Coordinated Deposition will be subject to the deposition time limits set forth above in
23 Paragraphs 18 and 19.

24 26. To the extent The People decline to participate in the Coordinated Deposition of an
25 Amazon Witness first noticed in any Other Pending Action which occurs on a date more than sixty (60)
26 calendar days after Amazon provides written confirmation that it has substantially completed its document
27 production in response to The People's requests for production of documents through and including
28 Set Six, and for which Amazon has provided notice to The People in accordance with Paragraph 19, The

1 People may not seek the deposition of that same Amazon Witness in this Action without Amazon's
2 consent or leave of the Court. For the avoidance of doubt, the limitations of this Paragraph shall have no
3 effect, and The People shall be free to notice and take any deposition of an Amazon Witness, where
4 Amazon fails to provide notice that complies with Paragraph 22 and The People decline to participate in
5 a Coordinated Deposition of that Amazon Witness. For the further avoidance of doubt, nothing in this
6 Paragraph, or otherwise in the Coordination Order, bars The People from seeking agreement from Amazon
7 or leave of Court to take additional testimony from any Amazon Witness based on documents produced
8 by Amazon after the date Amazon represents it has substantially completed its document production.

9 27. In the event Amazon seeks to coordinate testimony from one or more Amazon
10 Representatives offered in response to a deposition notice to Amazon in its corporate capacity issued in
11 any Other Pending Action, Amazon shall identify the designated topics for which it proposes offering
12 coordinated testimony at the time Amazon serves its responses and objections to such deposition notice.
13 Amazon shall provide a copy of any such deposition notice, and any responses and objections thereto,
14 contemporaneously with the service of Amazon's responses and objections. Thereafter, the Parties agree
15 to meet and confer in good faith concerning the coordination of such deposition, including the scope of
16 testimony for any coordinated proceeding, the participants, and any appropriate time limits for said
17 deposition. If Amazon fails to provide timely notice as contemplated under this Paragraph, The People
18 may elect to meet and confer concerning coordination in their sole discretion.

19 **V. NON-PARTY WITNESS DEPOSITION COORDINATION**

20 28. In the event Amazon receives a notice or subpoena for the deposition of a Non-Party in
21 any Other Pending Actions, Counsel for Amazon shall notify The People of such notice or subpoena and
22 provide The People a copy thereof within seven (7) calendar days of receipt. Thereafter, should either
23 Party seek to depose such Non-Party in a Coordinated Deposition in this Action, the Parties agree to meet
24 and confer to facilitate such coordination to the fullest extent reasonably practicable.

25 29. The Parties agree that a Party seeking the deposition of a Non-Party witness will issue and
26 send to the other Party a deposition notice with a proposed date for the deposition, which absent mutual
27 agreement or leave of Court for good cause, shall not be set for a date any earlier than sixty (60) calendar
28 days from the date the Party serves the deposition notice. For the avoidance of doubt, under this

Paragraph, a Party may serve a deposition notice without first obtaining or issuing a subpoena to compel attendance of the Non-Party witness at the deposition.

30. The Party receiving the deposition notice shall, within fourteen (14) calendar days, advise the Party seeking the deposition as to whether it intends to cross notice the deposition and either (i) confirm the proposed date, or (ii) use best efforts to propose reasonable alternative dates within fourteen (14) calendar days of the originally noticed date.

31. If the Party receiving the deposition notice wishes to seek documents to prepare for or participate in the deposition of the Non-Party, the Party receiving the deposition notice shall also, within fourteen (14) calendar days, either (i) serve any subpoena for production of such documents on the Non-Party; or (ii) in the event a subpoena must be domesticated for service in a foreign jurisdiction, provide notice of a forthcoming subpoena to the original noticing Party and the Non-Party, including a copy of said subpoena, and use best efforts to promptly domesticate and serve such subpoena. The Party serving such a document subpoena on a Non-Party shall use its best efforts to enforce the subpoena, so as not unreasonably delay the taking of the Non-Party deposition noticed by the other Party.

32. If the Party receiving the deposition notice fails to comply with the timing requirements set forth in the preceding Paragraph 28, it shall waive all rights to move to continue or reopen the deposition of the Non-Party, or seek any other relief, based on production of responsive documents after the deposition.

33. Notwithstanding any agreed date and to minimize, to the extent possible, the burden on and inconvenience to Non-Parties, the Parties further agree to work in good faith to make any mutually agreeable modifications to the date(s) for each deposition, including to coordinate, to the extent reasonably possible, with the Other Plaintiffs' Attorneys for their respective depositions of the same Non-Party in the Other Pending Actions and to account for the availability of the Non-Party, the availability of counsel for the Parties and Non-Parties, any burden and inconvenience to the Non-Party, and the needs of the Parties to seek documents from each other or the Non-Party and/or its affiliated entities in advance of the deposition if a subpoena for production of documents is timely served or noticed pursuant to Paragraph 28.

34. Notwithstanding anything in this Coordination Order, the Parties shall retain all rights to depose any Non-Party witness by providing the notice required by statute if the sixty (60) day notice

1 period contemplated herein would require the deposition of a Non-Party witness to take place after the
2 close of fact discovery in this Action. If the Non-Party witness is not reasonably available on the date
3 noticed, the noticing Party shall promptly notify all Parties, and the Parties shall meet and confer within
4 five (5) calendar days thereof regarding a reasonable and appropriate date, time, and location for the
5 noticed deposition, which may be conducted after the close of fact discovery in the event the Non-Party
6 witness cannot reasonably be made available on an earlier agreed-date.

7 35. Notwithstanding anything in this Coordination Order, apart from the failure to timely serve
8 or notice a subpoena for production of documents as outlined in Paragraph 28, the Parties retain all rights
9 to formally object (by motion or otherwise) to the taking of any Non-Party's deposition or to the timing
10 or scope of any such deposition in this Action. For the avoidance of doubt, provided a Party complies
11 with the timing requirements set forth in Paragraph 28 regarding service or providing notice of a subpoena
12 for documents, the Party retains all rights to formally object (by motion or otherwise) to the taking of any
13 Non-Party's deposition or to the timing or scope of any such deposition in this Action.

14 36. This Coordination Order does not impose, modify, or waive any discovery obligation,
15 objection, or applicable privilege the Parties may have with respect to the production of documents relating
16 to any Non-Parties except as expressly provided herein. The Parties do not waive any objections to and
17 shall retain all rights to formally object (by motion or otherwise) to any Non-Party discovery in the Action
18 except as expressly provided herein.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

DATED: April 17, 2024

Respectfully Submitted,

By: /s/ Stephen R. Smerek
Stephen R. Smerek

By: /s/ Jeffrey M. Davidson
Jeffrey M. Davidson

Rob Bonta (SBN 202668)
Attorney General of California
Paula Blizzard (SBN 207920)
Senior Assistant Attorney General
Natalie S. Manzo (SBN 155655)
Jamie L. Miller (SBN 271452)
Supervising Deputy Attorneys General
Robert B. McNary (SBN 253745)
Stephen R. Smerek (SBN 208343)
Lauren J. Pomeroy (SBN 291604)
Carolyn D. Jeffries (SBN 319595)
Nell G. Moley (SBN 295498)
Komal Patel (SBN 342765)
Deputy Attorneys General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Tel: (213) 269-6058

*Attorneys for Plaintiff and Cross-Defendant,
The People of the State of California*

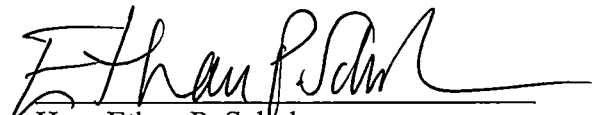
Heidi K. Hubbard (*pro hac vice*)
Kevin M. Hodges (*pro hac vice*)
Jonathan B. Pitt (*pro hac vice*)
Carl R. Metz (*pro hac vice*)
Carol J. Pruski (Bar No. 275953)
WILLIAMS & CONNOLLY LLP
680 Maine Ave. SW
Washington, DC 20024
Tel.: (202) 434-5000
Fax: (202) 434-5029

Jeffrey M. Davidson (Bar No. 248620)
Cortlin H. Lannin (Bar No. 266488)
Neema T. Sahni (Bar No. 274240)
COVINGTON & BURLING, LLP
415 Mission Street, Suite 5400
San Francisco, CA 94105
Tel: (415) 591-6000
Fax: (415) 591-6091
*Attorneys for Defendant and Cross-Claimant,
Amazon.com, Inc.*

[PROPOSED] ORDER

Pursuant to the above stipulation, IT IS SO ORDERED

DATED: Apr. 17, 2024


Hon. Ethan P. Schulman
Judge of the Superior Court


CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, Felicia Green, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On April 17, 2024, I electronically served STIPULATED COORDINATION PROTOCOL AND ORDER via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **APR 17 2024**

Brandon E. Riley, Court Executive Officer

By: 
Felicia Green, Deputy Clerk